HOUSE OF LORDS
European Union Committee

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The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 1 October 2017 – 31 December 2017

EU INTERNAL MARKET SUB-COMMITTEE

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Letter from Lord Whitty, on behalf of the Chairman, to Damian Hinds MP, Minister of State for Employment, Department for Work and Pensions

Thank you for your Explanatory Memorandum (EM) dated 11 September 2017 on this report on the Fund for European Aid to the Most Deprived (FEAD). The EU Internal Market Sub-Committee considered this at its meeting on 26 October 2017.

We were disappointed and very concerned to learn that the Government has been unable make use of €3.96m in FEAD funding to help support the most deprived and disadvantaged people in the UK.

Please detail the specific reasons that the UK's chosen programme (to expand breakfast club provision in England) was subsequently found not to be compliant with FEAD eligibility requirements. We would also like to know the response of the Commission to the Government's communication regarding other barriers to implementing the fund, namely the audit and procurement requirements and the small allowance for administrative costs.

The Government's inability to find a use for these funds is particularly surprising in light of the fact that other Member States have been able to use their FEAD allocations to support a range of activities, and given the Commission's specific intention that the fund should be an "instrument under simple management". Has the Government engaged with the FEAD Expert Group, FEAD Network, and with stakeholder consultations to raise issues experienced with the audit and procurement requirements, and to discuss how other Member States have overcome implementation problems?

Your EM notes that, if an alternative use for FEAD funds is not established, the funding received to date in pre-financing will be surrendered. We would like to know what other options the Government has considered, and is currently exploring, for use of the UK's FEAD allocation, and whether you have consulted with the devolved administrations regarding potential use of these funds to support programmes in Wales, Scotland or Northern Ireland.

Can you also clarify whether the €3.96m will be lost to the UK if the Government chooses not to draw down any further funding from the FEAD, or if, in this circumstance, the sum would be added back into the UK Structural Funds allocation?

We have decide to retain this file under scrutiny. We look forward to your response within 20 working days.

26 October 2017

Letter from Damian Hinds MP, Minister of State for Employment

Thank you for your letter of 26 October 2017 about the Explanatory Memorandum of 11 September 2017 concerning the Fund for European Aid to the Most Deprived (FEAD). I am sorry for the delay in replying, but I wanted to ensure that the matter was examined in detail. You have asked about the reasons the Government has been unable to make use of the fund.

The UK originally voted against Fund for European Aid to the most Deprived (FEAD) regulations on the basis that the proposal was inconsistent with the principle of subsidiarity – material aid measures are the responsibility of member states. The fund was nonetheless created, and in 2014, the government indicated that because the UK allocation from the fund is deducted from the structural funds of the relevant member state, it would minimise the adverse impact on those funds by taking the lowest possible allocation. The regulation was adopted in 2014 and the UK allocation was €3.96m for the 2014-20 period.

In 2014, the government announced that its FEAD allocation would be used to expand breakfast club provision in deprived areas in England. The Department for Education (DfE) received interim funding of €434k in 2014 in advance of the scheme commencing. This is the only payment DfE received.

After DfE had publicly committed to the scheme in 2014, the European Commission (EC) began detailed discussions on the regulations that govern how the money can be spent. It has since become clear that the original vision for how to use this funding cannot comply with the eligibility requirements for the fund.

The FEAD regulations restrict how and when the funds can be spent. The barriers to using FEAD to deliver breakfast clubs are:

- costs spent on transportation and warehousing are very small, and it was likely to be challenging to meet these through school-based distribution routes;
- the funding can only be spent on the most deprived, who need help with basic needs such as provision of food, clothing and other personal items, whereas DfE required flexibility to also focus on less disadvantaged children with parents who work;
- the funding could only be claimed by a public or charitable body, whereas DfE wished to retain flexibility to engage commercial partners;
- the audit requirements are extremely stringent, which would have been burdensome on schools;
- food has to be procured through a competitive tendering process – not consistent with a model where schools would secure food locally, including from donations; and
- the permitted administrative costs are very small – the DfE model rested, in part, on food secured at low or no cost, thus pushing up the proportion of funds spent on administration.

DfE discussed the barriers with the EC who were unable to change the regulations to accommodate a single member state. DfE were part of the FEAD Network and considered how other member states were successfully using the funds. Most states have developed a single delivery model such as large food banks on a single-site distribution model, something inconsistent with a school-based scheme. DfE engaged with external stakeholders, including a local authority network, to consider options at a local level before reaching the view that delivering the breakfast club programme would not be possible.

DfE have explored alternative options for using the funds, conducting a thorough internal examination of policies and projects. They could find no suitable alternative use for the funds compliant with the requirements. DfE also offered the allocation to other government departments but to-date no viable options have been identified. At the time of the original allocation, the Devolved Administrations indicated they did not have a use for the funds.

On 5 October 2017, DfE received a recovery notice from the EC to repay the interim funds by 30 November 2017. The interim payment has now been returned to the Commission. Government is continuing to explore how the FEAD funding might be used.

The Government has delivered significantly higher funding for breakfast clubs than that envisaged by the FEAD. DfE ran a two year £1.1m programme which ended in March 2016 which saw breakfast clubs implemented in 184 schools with a high proportion of disadvantaged pupils. At Budget 2016, the government announced further funding of £10m a year to set up breakfast clubs in up to 1600 schools. A procurement exercise for this programme was launched in October 2017, with delivery expected by Spring 2018.

If I can be of further assistance please do not hesitate to contact me.

30 November 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A FRAMEWORK FOR THE FREE FLOW OF NON-PERSONAL DATA IN THE EUROPEAN UNION (12244/17)

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital, Department for Digital, Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 12 October 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 16 November 2017.

We note that the Government is seeking clarification from the Commission on a number of aspects of the proposal. We look forward to an update on all of the issues set out in paragraphs 24–26 of your EM.

In previous correspondence on the Communication 'Building a European Data Economy', dated 30 March 2017, we highlighted a concern raised by techUK that initiatives on data localisation could liberalise the flow of data within the EU but also require data from third countries to be hosted within the EU. They warned that this might be a mechanism by which UK digital businesses could be attracted to relocate part of their operations to the EU after Brexit.

Now that the Commission has put forward a legislative proposal in this regard, have you had the opportunity to assess this risk? Will the Government seek to influence the proposal in order to limit localisation concerning data flows between the EU and third countries?

Please also provide further detail regarding whether and how 'public security' is defined under the proposed Regulation, and if the Government is content with the Commission's approach to this. Does the provision to allow competent authorities to access data stored in another Member State have any implications for sensitive business data? Has the Government consulted with UK businesses on this issue?

Regarding the provision for the Free Flow of Data "comitology" Committee, could you explain what implementing measures may arise under this proposed Regulation, which would therefore be subject to assessment by this Committee?

Please also explain your comment in paragraph 11 of your EM that the Government does not expect "any implementation will be necessary" with regard to the devolved administrations.

Finally, are the measures brought forward under this proposal consistent with the Data Protection Bill currently before the House of Lords? Would that Bill need to be amended to take the proposed Regulation into account, once it has been agreed?

We have decided to retain the file under scrutiny. We look forward to a response to this letter, including an update on the expected timeframe for the adoption and implementation of this proposal, within 30 working days.

16 November 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital

I am writing to update you on progress on this proposal. Following your most recent letter on 16 November 2017.

There was a debate on the proposal at the 4 December Telecommunications Council -which focussed on three aspects of the Regulation: the scope; the inclusion of the public sector data, and provisions governing cross-border data access.

There was general consensus on the importance of the proposal for the digital economy and the UK, along with several Member States, argued that public authorities should set an example by limiting their use of data localisation measures. There was some debate about creating additional exemptions to data localisation provisions, where we and other member states expressed doubts about agreeing extensive exemptions

Most Member States, including the UK, highlighted the importance of a speedy adoption of this file, as set out in the conclusions of the October European Council which called for the file to be concluded in the first half of next year. The digital agenda has been a high priority for the Estonian Presidency and it has confirmed its plan to seek to obtain an informal mandate for trilogue at the 20 December meeting of COREPER. As soon as I have a copy of that text I will send it to the Committee.

I would like to assure the Committees that we will maintain our parliamentary reserve, operating under ministerial direction, and that no final decision will be taken on this file without political agreement by Ministers.

There will be further negotiation of the proposal at working party level where we will continue to support the Commission's proposal and resist changes to the text that could weaken its scope and impact. While we are broadly supportive of the Commission's original proposal, any decision on voting will be taken under Ministerial instruction, and on the basis of the compromise text that is presented for an informal mandate.

I will continue to keep the Committee informed and I will write to you early in the New Year to update you on progress and to respond to the points you raised in your most recent letter of 16 November.

13 December 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN ELECTRONIC COMMUNICATIONS CODE (RECAST) (12252/16)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE BODY OF EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS (12257/16)

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital, Department for Digital, Culture, Media and Sport

In October 2016, I submitted the explanatory memoranda (EMs) referenced above, which were retained under scrutiny, and committed to keeping your Committee updated as negotiations progressed. Since then, I have provided updates to your Committee in February, April, and in August. Most recently, I wrote to you on 5 September to notify you of the Presidency's plans for COREPER on 11 October.

When I wrote to you on 5 September, I explained that the Presidency's aim was to agree a general approach *and* attempt to secure a mandate for EECC trilogue negotiations.

I can now confirm that COREPER will be used as an opportunity to agree a mandate for trilogue negotiations, but it will not be used to agree a general approach.

I am therefore writing to update you on the progress of EECC negotiations prior to COREPER. Later in the year, negotiations will go to a Council meeting (not necessarily Telecoms Council, which is on 4 December) so that a general approach can be agreed. I will write to you prior to the Council in question to request a waiver or clearance.

The COREPER mandate will enable the Estonian Presidency to hold two to three trilogues on the EECC before the end of the year.

There has been no discussion of the BEREC Regulation in Council thus far, but the Presidency intends to issue a revised text late September and to discuss it at Council Working Groups on 10, 11 and 26 October. The Presidency hopes to be able to reach a general approach on the BEREC regulation in December at Telecoms Council. As was evident at both Telecoms Councils this summer, a majority of Member States are opposed to making BEREC into an EU agency.

It is of course possible that this provisional schedule for both files will slip.

Policy proposal updates:

Council Working Groups on the EECC resumed in September, so there have been further discussions on the EECC since I last wrote.

Spectrum: Council Working Groups (CWGs) addressing Spectrum resumed on 5 September. The Presidency acknowledged the concerns of the UK, along with many other Member States, that the Commission's proposals unnecessarily extend Commission powers of intervention in spectrum management procedures. Subsequent iterations of the Council's compromise text have removed or re-drafted these powers to reflect a position that we are broadly content with. We are continuing to work with other Member States to agree collaborative solutions to any outstanding issues within the text.

Services: Since Council Working Group discussions resumed there has been some discussion of the Services elements of the EECC. The Presidency supports full harmonisation of consumer rights as set

out in the EECC. We do not support this position because full harmonisation would prevent Member States from applying higher standards of consumer protection. The Presidency text improves on the Commission's text in such a way that should enable the UK to maintain its consumer protection levels, although we are still negotiating the wording to ensure that our concerns are met in full.

On **Over-The-Top services (OTTs)**, our position remains the same as set out in my August update. We continue to argue for a proportionate approach to regulation which should only exist in the case of consumer harm, proven market failure or in cases where these services exhibit characteristics similar to those of traditional telecommunication services.

Regarding the **Universal Service Obligation (USO)**, we continue to support the draft of the text, which in March reintroduced full funding flexibility for the USO, which allows the USO to be funded, as currently, by an industry cost sharing mechanism, public funding, or a combination of two. There have been no substantive debates on USO since then.

Access and Investment: We continue to support the Commission's vision of affordable, reliable and ubiquitous first class electronic communications networks across the EU in order to meet consumers' growing demands on connectivity and to boost competitiveness. Its key objective is to encourage the private sector investment in infrastructure required to meet this vision. It also contains a commitment to retain the core principle of competition as a driver of this investment as well as consumer choice.

A small number of points of detail remain that need to be resolved. DCMS officials are working with like-minded Member States to argue against proposals by the Commission that will not support competitive markets and risk re-creating localised monopolies for national incumbent operators.

3 October 2017

Letter from Lord Whitty on behalf of the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital

Thank you for your letters dated 21 August, 5 September and 3 October 2017 on the above proposals. The EU Internal Market Sub-Committee considered these letters at its meeting on 19 October 2017.

We would be grateful for an update on whether a mandate for European Electronic Communications Code (EECC) trilogue negotiations was gained at the COREPER meeting of 11 October. In either case, please keep us apprised of subsequent negotiations and when you expect this file to be taken to Council for a General Approach. Please would you also confirm if you expect the text to be taken to Council as an 'A' item on the agenda?

Below we set out a number of questions regarding the proposed EECC text, some of which we also put to the Commission in writing, copied to you, on 27 April 2017.

Spectrum

Your letter states that you are broadly happy with the re-drafted text's position on the Commission's powers of intervention in spectrum management procedures. Please would you explain the text's latest position in more detail, particularly in relation to the power of the Commission to set the terms of spectrum licences in some circumstances (Article 46) and to set common maximum dates for spectrum authorisation? Please would you also detail the "outstanding issues" referred to in your letter?

Services

We welcome your update that the Presidency text is drafted in such a way that would enable the UK to maintain its current level of consumer protection. However, we have particular concerns about the proposed expansion of regulation for over the top (OTT) services. We would like to know whether the Government considers the text to be proportionate in its approach to regulation of OTTs and what impact the proposals will have on innovation, particularly for SMEs. Please would you also confirm if clarity has been gained on the application of the regulations to interpersonal communications that are ancillary to a main service? For example, are live messaging functions built into social media within scope?

Access and investment

Please confirm if the text still proposes to loosen regulatory obligations for investments in new very high capacity (VHC) network elements that are open to reasonable co-investment offers and the Government's position in relation to this. We would also like to know your position on proposals to permit price flexibility (article 72) and whether there have been any significant recent amendments to this article in the latest draft text.

In the Annex to your letter of 21 February 2017, you explained that the Commission's proposals to require companies to provide accurate investment plans (and to sanction those who do not) had caused concern among industry respondents. What is the latest position of the draft text in this regard and has greater clarity been gained on whether companies would indeed incur sanctions if they did not provide accurate investment plans?

BEREC

Regarding the BEREC Regulation, we look forward to a comprehensive update, particularly on the Government's policy position in relation to the proposed double-lock veto procedure and peer review process for spectrum assignments. Given the contentious nature of the proposal to make BEREC an agency, how likely is it that a General Approach will indeed be agreed at Council in December?

We have decided to retain these files under scrutiny. We look forward to a response to our questions as well as a general update on negotiations within 10 working days.

20 October 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital

Since submitting the explanatory memoranda (EMs) referenced above, I have provided regular updates on these files, most recently on 3 October. On 11 October Member States unanimously supported a COREPER mandate for the Presidency to begin informal trilogues on the EECC with the European Parliament.

Subsequently, the first exploratory trilogue on the EECC was held on 25 October. A further trilogue is scheduled before the end of the year. We expect the file to be adopted by mid 2018.

As yet the Estonian and Bulgarian Presidencies have not set out their plans to take the file to vote on a general approach at Council. I can reassure the Committee that the EECC file will not receive political agreement from the UK without a vote by Ministers at a Council.

The Commission's proposals sought to extend existing powers of oversight to include areas such as **spectrum** assignment, award, competition assessment, licence duration and spectrum utilisation. This risks hindering NRAs from ensuring the most efficient use of spectrum. The latest Council text removes implementing powers from Art 45, 46 and 47.

Our outstanding outstanding issues in the Council text have been resolved. These issues included making the peer review of spectrum awards voluntary and coordinated by the Radio Spectrum Policy Group, and making the length of licence duration flexible.

We are satisfied that the final Council text will not reduce current UK **consumer protections**, and we have also secured the reintroduction of powers enabling NRAs to regulate retail markets.

With regard to the regulation of over the top services (**OTTs),** the EECC text adopted by the Council incorporates a "service blind" approach. This means regulation will only apply where an OTT service displays relevant characteristics. BEREC will undertake regular reviews of this and there is also an instrument allowing for regulatory intervention for any emerging problems with OTTs.

Services where interpersonal communications are ancillary to a main service are now out of scope of the regulation. The Council has amended the definition of interpersonal communication services to remove those services which use communications as a minor feature only.

On **access and Investment**, we have worked with other member states to ensure that the text does not unduly loosen regulatory obligations for investments in new Very High Capacity Network elements that are open to reasonable co-investment. The UK believes that Article 74 now contains sufficient discretion for the NRA to safeguard against negative impact.

We are supportive of Article 72 on price control and cost accounting obligations. Ofcom already has the power to permit pricing flexibility in the UK. The Presidency text adopted on this Article now includes a requirement for an NRA to take into account the need to promote competition when determining whether or not price control obligations would be appropriate.

The revised Article 22 now gives the regulator discretionary rather than mandatory powers to survey industry **investment plans**. The text includes a requirement for the regulator to consider the impact of the provision of information that is "misleading, erroneous or incomplete" or changed without "objective justification". Authorities can then impose fines and penalties on operators who deploy networks in "digital exclusion areas" but had not indicated their plan to do so.

Three Council Working Groups on **BEREC** have taken place, and the Presidency has issued a redrafted text which no longer proposes establishing BEREC as an agency of the Commission. The institutional and legal status of BEREC remains the same.

Negotiations are proceeding smoothly and we expect the Presidency to aim for a General Approach at Council on 4 December. I will write again in the next few weeks to request a waiver or clearance for the Government to support the text at that Council.

You also specifically asked about proposals for the double-lock veto procedure. This proposal flows from the EECC rather than the proposed BEREC regulation, and the latest Council position does not contain the double-lock veto.

2 November 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital

I have provided regular updates on this file and 12252/16 - proposals for a revised European Electronic Communications Code (EECC) (recast), most recently on 2 November.

On 31 October the Presidency issued a new Regulation compromise text; I attach a copy for your convenience (13732/17). Negotiations have been progressing smoothly and the Presidency will take a draft text to COREPER on 22 or 24 November to seek a steer that it will have a qualified majority in a ministerial vote on a general approach at Telecoms Council on 4 December. Further Council working groups are scheduled in November.

Institutional Structure

BEREC currently has a two-tier structure; BEREC, comprising the Board of Regulators, and the BEREC Office. The Board is made up of representatives from national regulatory authorities (NRAs) and the BEREC Office employs staff in line with other European agencies. BEREC itself is not an EU agency.

The Commission originally proposed merging the Board and the Office into a single EU agency, a proposal that was opposed by the UK and other Member States. The UK argued BEREC's value stems from its independence from the Commission and national governments, and that merging the two tiers would see far greater Commission influence over BEREC and fundamentally alter its status as a technical advisory body. The Commission initially proposed to double its representation on the Board and to give itself voting rights on regulatory matters. *The UK is content with the latest draft of the text which returns to the current institutional set-up, guarantees BEREC's independence from the Commission and no longer gives the Commission any voting rights on regulatory matters.*

Legal Personality

The Commission also proposed a sole legal personality for a newly established BEREC. The BEREC Office currently has legal personality, while BEREC does not.

BEREC does not issue binding decisions - the content of its guidelines, opinions or recommendations do not create any liabilities which could be challenged in court. There is, therefore, no reason to gift BEREC with such a legal personality.

The UK further argued that providing such legal personality created a risk that BEREC could be tasked with taking legally binding decisions in future and thus set it on the road to full agency status. *The UK is content with the latest version of the text which retains the status-quo; BEREC does not have legal personality whereas the separate BEREC Office retains legal personality.*

Voting Rules

In line with its 'Common Approach' on decentralised EU agencies[1],the Commission proposed altering BEREC's voting arrangements on regulatory decisions from the current two-thirds majority to a simple majority. The UK opposed this as BEREC is a technical advisory body and its decisions should have broader, more robust support. *The UK is content with the latest text which retains the two-thirds voting system for regulatory decisions.*

The latest text does amend the voting rules for purely administrative matters taken by the Management Board of the BEREC Office. *The UK is content with these changes and is content to see this being aligned with the Common Approach*.

Participation of Competent Authorities in BEREC Working Groups

The Council drafting of the recast EECC allows for some technical tasks to be assigned to bodies other than NRAs, and there are Member States who have argued that it makes sense for representatives from these bodies to attend BEREC working groups, where relevant. The UK continues to work with other Member States to find an appropriate way in which non-NRA representatives can provide input to BEREC without undermining the independence of its regulatory decision making.

I hope the Committee find this update helpful and can clear this file from scrutiny, (or alternatively grant a scrutiny waiver), ahead of the Council on 4 December. I will continue to keep the Committee updated during the trilogue negotiations.

16 November 2017

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital

Thank you for your letters dated 2 and 16 November 2017 on the above proposals. The EU Internal Market Sub-Committee considered these letters at its meeting on 30 November 2017.

Regarding the proposal for a revised Electronic Communications Code, please keep us updated on the progress of informal trilogue negotiations and when the file is expected to be taken to Council to agree a General Approach.

In particular, we are still interested to know the Government's position on whether the proposed Code is proportionate in its approach to regulating OTTs, and the impact OTT measures may have on innovation, particularly for SMEs.

Regarding the proposed Regulation on BEREC, we consider the changes to the text to be positive and welcome the Government's support for this proposal.

We have decided to retain the proposal for a Directive on the Electronic Communications Code under scrutiny and to clear the proposed Regulation on BEREC. We look forward to a response to this letter in due course.

30 November 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON RAIL PASSENGERS' RIGHTS AND OBLIGATIONS (RECAST) (12442/17)

Letter from the Chairman to Mr Paul Maynard MP, Parliamentary Under-Secretary of State for Rail, Accessibility and HS2, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 20 October 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 16 November 2017.

We note that you are currently undertaking a detailed examination of the proposal and look forward to further updates on the Government's developing policy position and your assessment of any financial implications. We would also like to know the views expressed by industry, passenger representative

[1] https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf

bodies (including Transport Focus), the devolved administrations, and the ORR in the course of your consultation.

Could you clarify which, if any, currently exempted rail services in Great Britain stand to be brought within scope of the new Regulation? We note that some aspects of the proposal are already covered by domestic rail provisions but please detail those which would represent additional requirements for UK rail operators.

The Commission's Impact Assessment acknowledges a potential conflict between the objectives of passengers and the rail sector but considers that the proposal strikes a balance between strengthening rail passenger rights and reducing the burden on railway undertakings. Will the achievement of this balance be taken into account in the Government's consideration of the cost implications of the proposal?

The proposal aims to ensure that passengers on a connecting journey are informed whether their rights apply to the whole journey or only to the individual segments. However, Trainline and ALLRAIL have called for the proposal to extend missed connection protections across all rail operators, regardless of whether passengers booked a through-ticket or a combined journey (involving several ticket contracts).

In light of the rise in the number of passengers booking combined journeys via online platforms, is the Government content with the proposal's focus on improving passenger information – and encouraging wider availability of through-tickets – rather than extending protections to cover all booking types? In addition, is it your understanding that the information provision requirements of this proposal would cover information for passengers on how they can claim compensation, and the timescales involved in this?

Finally, your EM notes that the proposal will benefit citizens of third countries, as the rights put in place by the proposal would apply to all rail passengers travelling in an EU or EEA Member State. Can you confirm that being a citizen of a third country would have no implications for the ability of a passenger to enforce the rights conferred by this Regulation, including through an EU Member State's national enforcement body?

We have decided to retain this file under scrutiny. We look forward to your response within 30 working days.

16 November 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES AS REGARDS THE ACCESSIBILITY REQUIREMENTS FOR PRODUCTS AND SERVICES (14799/15)

Letter from the Rt Hon Lord Henley, Under Secretary of State, Department for Business, Energy and Industrial Strategy

I am writing to you to give an update on the Council negotiations on the above proposal, referred to as the European Accessibility Act (EAA). On 26 September Richard Harrington wrote to the Committee on behalf of my predecessor Lord Prior responding to the questions you set out your letter of 8 September. As indicated in that letter, the Presidency has stated its intention to press for a General Approach at the Employment and Social Affairs Council (EPSCO) on 7 December. I am requesting a scrutiny waiver so that the UK can participate actively at Council.

Since the previous update, the Estonian Presidency has proposed two revised texts responding to Member State concerns. The UK's views on the changes are mixed. We welcome a significant improvement in the clarity of Article 12 on disproportionate burdens, with a new Annex IV setting out guidance on how this article is to be used. The new text also provides some further clarity on the accessibility requirements set out in Annex I, which goes some way to addressing our concerns, as set out in previous letters to the Committee. We will continue to press for improvements in this area in conjunction with other like-minded Member States.

We remain concerned, however, about the text on electronic and emergency communications, where little progress has been made. We want to avoid the potential for overlaps and inconsistencies with the

European Electronic Communications Code (EECC), which is being negotiated simultaneously. We are also concerned that the requirements on emergency communications are not proportionate or sufficiently clear and have not been justified in the Impact Assessment.

In the next few weeks of negotiations, we will be focussing on further improving the clarity of Annex I, in particular seeking to remove or amend overly specific requirements that could be a barrier to innovation. We will also press for a resolution of the overlaps we have identified with the EECC and argue that requirements on electronic communications and emergency call answering services should be clear and proportionate to the aims of the legislation.

We will continue to advocate that Article 12 and the new Annex IV together provide a clear and effective set of guidelines, and we will continue to argue for other changes in the text which improve clarity, reduce unintended consequences and avoid disproportionate burdens on business. We will also aim to ensure that further changes do not erode progress previously made on:

- amendments to the scope and definitions to limit the scope and ensure consistency with other Union legislation;
- clarifications to avoid conflicts with sectoral Union legislation on audio-visual media services (AVMS) and transport;
- exemption of microenterprises from the requirements on service providers;
- removing references to risk and product recalls; and
- amendments to the clauses on disproportionate burdens and transitional measures which mitigate the burden on service providers to replace costly self-service terminals.

Other Member States share our concerns about the pace of the negotiations and the overall readiness of the legislation. They also share our broad concerns around clarity, business burdens, not hampering innovation and avoiding overlap with other legislation.

The Presidency has attempted to address some of these concerns in the latest revised text, although it is clear there is no consensus in Council over the treatment of emergency services or the balance between ensuring an effective single market in accessible products and services and not placing disproportionate burdens on business. Despite the reservations of other Member States on some aspects of the text, with further work in the next month we think there is a prospect of a General Approach being adopted at EPSCO.

We expect to receive further iterations of the text as we approach EPSCO and will continue to work with other Member States in working groups to improve the drafts. We will be monitoring progress carefully to determine whether enough has been done to address the UK's concerns, particularly on clarity and proportionality, ahead of a potential General Approach.

I request a waiver in order to allow the UK to participate fully at Council and will update the committee afterwards.

8 November 2017

Letter from the Chairman to the Rt Hon Lord Henley, Under Secretary of State

Thank you for your letters dated 26 September 2017 and 8 November 2017 on the above proposal. These letters were considered by the EU Internal Market Sub-Committee at its meeting on 30 November 2017.

These letters provided helpful detail on the Government's outstanding areas of concern, and on your negotiating priorities ahead of the EPSCO Council on 7 December. We have decided to grant your request for a scrutiny waiver for this meeting. Following the meeting, please provide a comprehensive update on any agreed text, whether and how the UK's concerns have been addressed, and the expected timeframe for trilogue discussions.

The September letter described the Government's informal consultation with industry representatives and mentioned your intention to engage with disability groups. We would also be interested to know the outcome of those discussions.

1 December 2017

Letter from the Rt Hon Lord Henley, Under Secretary of State

Following my letter to the Committee on 8 November, I am writing to thank the Committee for the scrutiny waiver for the above proposal (referred to as the European Accessibility Act or EAA), which was provided for the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 7 December. As requested, here is a comprehensive update following the Council meeting which responds to the questions raised by the Committee in your letter of 1 December.

Continuing negotiations prior to EPSCO

Following my previous letter to the Committee, negotiations continued in working groups during November and the Estonian Presidency made a number of further amendments to the text of the Directive. These included some limited alterations intended to clarify the Annex I requirements and Article 12 on disproportionate burdens, the removal of the requirement for communication providers to provide relay services, and additional text in the recitals stating that in case of conflict with the European Electronic Communications Code (EECC) the code should take precedence.

At COREPER on 24 November, several Member States, including the UK, expressed support for removing sections of the text that referred to a specific requirement on services answering 112 emergency calls. The Presidency revised the text accordingly and presented it to EPSCO for agreement.

EPSCO proceedings

Ministers agreed a General Approach on the Presidency's compromise European Accessibility Act (EAA) text (enclosed). The UK stated its support for the aims of the proposal and set out its strong domestic record on realising the rights of people with disabilities but registered an abstention, reflecting concerns about the clarity of the text and the risk that it would impede, rather than promote, innovation which might help accessibility. The UK tabled a written statement to this effect, which is enclosed with this letter. All other Member States supported the General Approach. Finland tabled a statement outlining likely problems with implementation, whilst Italy and Spain tabled statements regretting the removal of the 112 emergency number from the scope.

UK position

As outlined in previous letters to the Committee, the UK raised a significant number of concerns with the approach taken in the original EAA proposal throughout the negotiations. Many of these were shared with other Member States. Some of these have been resolved during the course of the negotiations, including the concern relating to emergency communications described in my previous letter, which was resolved at COREPER with the removal of emergency call answering. However, substantial concerns remained about the compromise text presented at EPSCO.

From the outset, the UK registered concerns about the text's lack of clarity, particularly the disproportionate burden provisions (Article 12) and the accessibility requirements which are set out in Annex I. The Estonian Presidency introduced a new Annex IV to provide additional guidance on how to assess whether a requirement is a disproportionate burden; we welcome this. However, it remains unclear how the new benchmarks are to be used in practice, with the risk that different Member States' market surveillance authorities will assess them inconsistently, hindering an effective single market. Despite attempts by several Presidencies to reorder and clarify the language in Annex I, for example by adding examples (a UK suggestion), we remain concerned that the text here is also unclear and would be difficult to comply with.

Our fundamental concern with Annex I, however, remains the prescriptive nature of many of the requirements in stipulating particular accessibility solutions, in particular those relating to the user interface of products and provision of information in an accessible form. Specifying very detailed requirements limits the ability of businesses to innovate and find better accessibility solutions than those currently available, to the detriment of the intended beneficiaries of the Directive.

Throughout the negotiations the UK has been concerned that the horizontal nature of the legislation risks creating overlaps with sectoral legislation that includes accessibility requirements. We have also expressed reservations over provisions which will significantly affect electronic communications networks, considering that these would be better dealt with in the European Electronic Communications Code (EECC). While the overlaps with transport and audio-visual media services legislation have been removed, there remains a real prospect of incompatibility with the EECC. This

stems from a cross-reference in the EAA to the EECC which would result in the two Directives placing contradictory requirements on some electronic communications service-providers. The addition of a recital in the EAA which specifies that the EECC should prevail in case of conflict does not in our view fully resolve this issue: it would be preferable to amend the body of the text so that such inconsistencies did not arise, or simply place the requirements in the EECC and not the EAA.

The UK believes in robust legislation on accessibility and has always supported the aims of this Directive in improving the accessibility of a range of products and services for persons with disabilities. However, given these outstanding, fundamental concerns with the text presented to EPSCO, we considered it had not yet reached a stage where the UK could support it. The UK therefore abstained. The Government's final position took account of a wide range of views, including those of industry, disability groups and accessibility experts.

Update on stakeholder consultation

Disability groups have expressed support for the EAA and are concerned that the UK's legislative provision will not keep pace with EU standards when we leave the EU. The Government has clarified that, regardless of the outcome of EU exit negotiations, the UK's legislative framework will continue to promote and protect the rights of disabled people. Industry representatives have continued to express concerns about clarity and prescriptive requirements, similar to those outlined previously. My officials will continue to work with the Office for Disability issues to ensure views on the EAA are sought as part of their ongoing engagement with disability stakeholders on accessibility issues and UNCRPD implementation. My officials will also speak to industry stakeholders about the steps businesses would need to take in order to implement the proposal's requirements.

Next steps

We expect the Bulgarian Presidency to commence trilogue early in 2018, but they have not yet set out a timetable for these negotiations. Given the length and complexity of the Directive and the divergence between the Parliament and Council texts on a number of substantive points, such as the inclusion of public procurement in the scope, we do not expect the trilogue process to be completed quickly. We will continue to keep the Committee updated on the progress of negotiations.

19 December 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PREVENTIVE RESTRUCTURING FRAMEWORKS, SECOND CHANCE AND MEASURES TO INCREASE THE EFFICIENCY OF RESTRUCTURING, INSOLVENCY AND DISCHARGE PROCEDURES AND AMENDING DIRECTIVE 2012/30/EU (14875/16)

Letter from Lord Whitty, on behalf of the Chairman, to Margot James MP, Parliamentary Under Secretary of State, Department for Business Energy and Industrial Strategy

Thank you for your letter dated 15 August 2017 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 2 November 2017.

Thank you for your informative answers to the questions posed in our previous letter. As negotiations progress, we would be grateful for an update on any significant changes to the text, as well as the estimated timetable for it to be taken to Council for a General Approach.

We would also like a specific update on the Government's position regarding:

- Whether the proposal's provisions for data collection on the effectiveness of insolvency procedures would represent a substantive change from existing UK measures.
- If the best interest of creditors test should be based on the minimum liquidation value for a company or the 'next best option'.

We have decided to retain the file under scrutiny. We look forward to a response to this letter in due course.

3 November 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON RULES IN THE FIELD OF CIVIL AVIATION AND ESTABLISHING A EUROPEAN UNION AVIATION SAFETY AGENCY, AND REPEALING REGULATION (EC) NO 216/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (14991/15)

Letter from Baroness Sugg, Under Secretary of State, Department for Transport

I am writing to update you on the progress in negotiations on the Commission proposal to update the EASA Regulation. As you will be aware the Transport Council agreed a general approach on this proposal on 1 December 2016 and your Committee cleared it from scrutiny at its meeting of 25 November 2016. Since then the proposal has been the subject to lengthy trilogue discussions under the Maltese and Estonian Presidencies. A provisional agreement has now been reached as a result, which will be submitted to the European Parliament plenary and to a future Council of Ministers for approval, following a COREPER stage on 20 December.

The Government's policy objectives as outlined in the original Explanatory Memorandum and subsequent correspondence on the proposal have largely been achieved in the provisional agreement:

i) Extension of Scope

The extension of the scope of EASA's remit has been limited to ground handling service providers, aspects of aviation security where there are interdependencies with safety, and drone safety. The scope of the Regulation is therefore propionate and is in line with our aims as set out in the Explanatory Memorandum.

ii) Subordinate Legislation

Compromises have been made with the European Parliament regarding the use of Delegated Acts. Delegated Acts are now used to amend Annexes II to IX and for issues where the Commission or EASA is responsible. We accept that the use of Delegated Acts is appropriate for these purposes. Implementing Acts are mainly used where Member States will be responsible for implementation. However, Delegated Acts, rather than Implementing Acts, have been proposed for the adoption of detailed technical requirements in a small number of areas where Member States will be responsible for implementation. The areas covered relate to flight and duty time limits for aircrew, approvals for aerodrome operators (and ground handling and apron management service providers) and technical requirements for air traffic management systems. EASA are required to undertake full consultation on any proposals for introducing (or amending) requirements in these areas. The Commission has stated that they would also wish to consult Member States on any delegated acts in these areas before they are adopted. Member States should therefore retain significant influence on the development and finalisation of the requirements in these areas even with the use of delegated acts.

iii) Cooperative Oversight/Transfer of Responsibilities

We were satisfied that the provisions supporting voluntary cooperative oversight and the transfer of responsibilities between Member States agreed in the Council General Approach could improve efficiency and safety outcomes. Some further refinements of these provisions have been agreed with the Parliament but these do not affect intent of the provisions. The emergency oversight mechanism proposed by the Commission, which we supported, was removed in the General Approach. This has now been reintroduced as an oversight support mechanism to assist states that are struggling to provide an adequate level of oversight.

iv) Information Sharing

The provisions on information sharing remain substantially unchanged from the Council General Approach.

v) Enhanced Governance Mechanisms for EASA

The provisions on governance remain substantially unchanged from the Council General Approach.

In order to reach a draft agreement with the Parliament, the Presidency has also provisionally agreed to the inclusion of a threshold for the registration of drones. Drones with a potential energy on impact

of 80 joules (roughly equivalent to a maximum mass of 900g) or more will require to be registered. This is much higher than the 250g threshold for registration of drone users that is currently being considered in the UK. However, Member States remain free to impose additional requirements on non-safety grounds and it is likely that a 250g threshold for legislation could still be established in the UK. In addition, the Registration threshold set in the Regulation may be amended by delegated acts.

The Presidency believes that the provisional agreement is the best that could be obtained. Having assessed the final text I believe that overall the Regulation will achieve the objective of the original proposal and is broadly in line with the UK's policy objectives. In particular it will ensure that the requirements adopted by EASA are proportionate and, wherever possible, performance based rather than prescriptive. If the Council and European Parliament do not approve the provisional agreement it is unlikely that further progress will be made with the proposal in the foreseeable future. It is therefore my intention to endorse the provisional agreement in the interests of the aviation industry and consumers.

18 December 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 883/2004 ON THE COORDINATION OF SOCIAL SECURITY SYSTEMS AND REGULATION (EC) NO 987/2009 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EC) NO 883/2004 (TEXT WITH RELEVANCE FOR THE EEA AND SWITZERLAND) (15642/16)

Letter from Damian Hinds MP, Minister for Employment, Department for Work and Pensions

I am writing to update your Committee on the progress of this file and to request a partial scrutiny waiver, as we now understand that the Presidency plans to seek a Partial General Approach on two elements of the proposed amendments to the regulation - equal treatment and applicable legislation - at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 23 October.

My statement of 4 July on the outcome of EPSCO held on 15 June provided an update on the progress of proposals for Regulation 883/2004. It explained that EPSCO took note of a progress report, with the Presidency outlining how close they thought Council was to agreement on the two chapters being considered by the Maltese Presidency – equal treatment and applicable legislation.

Estonia took over the Presidency in July and have been successful at continuing to address the outstanding issues relating to the equal treatment and applicable legislation chapters. They have also opened up discussions on two new chapters – long-term care benefits and family benefits, with the aim of reaching an agreement on these chapters by the end of their Presidency term in December.

Equal treatment – Article 4 of Regulation 883/2004 (the basic Regulation) entitles mobile EU citizens to equal treatment with nationals of the Member State they are in. The extent to which Member States may rely on the provisions relating to the rights of residence, set out in Directive 2004/38/EC (the "Free Movement Directive"), to limit access to benefits and so qualify the right to equal treatment, has been considered by the Court of Justice of the EU (CJEU). Ultimately, this led to a series of helpful judgments between 2013-16 (*Brey*, *Dano*, *Alimanovic* and *Garcia-Nieto*), culminating in the UK winning an infraction brought by the Commission challenging the UK's 'right to reside' test for Child Benefit and Child Tax Credit (*Commission v. UK* – C-308/14). The CJEU ruled that the right to equal treatment in Article 4 of the basic Regulation is subject to compliance with conditions relating to residence in the Free Movement Directive, and so Member States may refuse to grant certain benefits to mobile citizens without a legal right of residence under the Free Movement Directive.

The proposed changes aimed to codify the recent CJEU case law. However, negotiations have demonstrated that the Council is still split between those that believe that all the case law should be codified within the Regulation; some limited support for partial codification; and also opposition to any change to Article 4 (equal treatment) on the grounds that either Treaty rights on equal treatment would be eroded, or because they are willing to support the *status quo* as a compromise position.

In negotiations the UK has argued for codification of all recent CJEU cases as our preferred outcome. Our aim being to bring greater legal clarity to the relationship between the basic Regulation and the

Free Movement Directive. However, non-codification of the CJEU case law and maintaining the *status quo* would also meet the UK's objective. This is because the helpful CJEU case law set out above would remain binding irrespective of codification in Regulation 883/2004. We will resist any option that would undermine the case law and I would wish to support options that preserve the value of the case law at EPSCO, and would be grateful if the Committee would consider granting a partial scrutiny waiver on equal treatment.

Applicable legislation – The general EU rule on applicable legislation is that a worker (and their employer) or a self-employed person pays social security contributions in the Member State where the work takes place. In any event, the Regulations provide that the worker shall be subject to the social security legislation of a single Member State and this is usually the State responsible for the payment of benefits, including family benefits. There are also special rules such as for those who work in more than one Member State – posted workers, mariners, and flight and cabin crew – which ensure such workers still only pay contributions in one Member State under these regulations. A worker who is posted by his employer to another Member State (or a self-employed person who continues to work in a self-employed capacity in another Member State) for a period of no longer than 24 months, continues to be subject to the legislation of their Home State and pay contributions to its scheme.

The proposed amendments include aligning the term "posted worker" under the Regulations with the meaning given within the Posted Workers Directive (Directive 96/71/EC). The proposals also include a number of technical amendments such as updating the legislative reference defining the "home base" for flight crew, clarifying the rule that a posted worker cannot be a person who is replacing another previously sent employed person whose initial period has been completed, and strengthening the co-operation between Member States to determine which Member States' legislation is applicable to these mobile workers.

In negotiations the UK's objective on applicable legislation has been to press for amendments where appropriate to make sure the text is clear and unambiguous and to prevent unwelcome changes that would introduce loopholes or unwanted burdens on business or Government. The UK supports the amendments overall as they improve the current processes and help tackle fraud and abuse, and I would wish to support the suggested changes at EPSCO.

The UK's approach to the file overall, remains to seek refinements to the proposed amendments whilst avoiding disagreements with other Member States and to balance our negotiations on these proposals against the backdrop of UK exit negotiations. I appreciate that your Committee will not be in a position to provide clearance on the whole file until the outcome of negotiations on all chapters is known, I would, however, be grateful if you could grant a partial scrutiny waiver for equal treatment and applicable legislation ahead of EPSCO.

10 October 2017

Letter from Lord Whitty, on behalf of the Chairman, to Damian Hinds MP, Minister for Employment

Thank you for your letter dated 10 October 2017 which was considered by the EU Internal Market Sub-Committee via correspondence from 17-20 October 2017.

We welcome the clarity you provided on the Government's policy position on the equal treatment and applicable legislation elements of this file. We have decided to grant a partial scrutiny waiver in relation to these chapters for the meeting of EPSCO on 23 October 2017. If a partial General Approach is not reached at this meeting, the scrutiny reserve will once again apply.

In your next letter, please provide us with an update on the outcome of the EPSCO meeting, as well as full details on the progress of the outstanding chapters of the file and when they are expected to be taken to Council. Please would you also confirm if you have gained clarity on which benefits will be covered by the change in scope of long-term care benefits?

We look forward to a response to this letter within 30 working days.

20 October 2017

Letter from Damian Hinds MP, Minister for Employment

I would like to thank the EU Internal Market Sub-Committee for its further consideration of this file and for granting a partial scrutiny waiver in relation to the equal treatment and applicable legislation chapters.

In response to your letter dated 20 October 2017, my statement of 30 October on the outcome of the 23 October EPSCO explained that Margot James, Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, represented the UK. Only one Member State abstained and made a statement on this file and the Council agreed a partial general approach on equal treatment and applicable legislation, with the UK voting in support as the UK's objectives were met.

The Estonian Presidency has already opened up discussions on two further topics – long-term care benefits and family benefits, with the aim of reaching an agreement on these chapters by the end of their Presidency term in December. The Commission and the Estonian Presidency, have reiterated their view that this whole file should be concluded during the current mandate of the European Parliament.

At this stage it is too early to know which benefits will be covered as a result of the introduction of distinct provisions on long-term care benefits in the Regulation. However, our aim is to ensure there is no widening of the existing scope of the Regulation which already covers long-term care benefits by virtue of Court of Justice of the European Union (CJEU) case law. Currently the sickness benefits chapter of the Regulation covers; attendance allowance, disability living allowance (care), Personal independence payment (daily living), carer's allowance, industrial injuries disablement benefit, employment support allowance (contribution based) and maternity allowance. Further work is underway to determine which of the benefits are classified as sickness benefits and which are long-term care benefits in future. I will continue to keep the Committee informed of developments as the negotiations progress.

6 November 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE LEGAL AND OPERATIONAL FRAMEWORK OF THE EUROPEAN SERVICES E-CARD INTRODUCED BY REGULATION ....[ESC REGULATION].... (5283/17)

Letter from Lord Whitty, on behalf of the Chairman, to the Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 3 August 2017 on the above proposals. The EU Internal Market Sub-Committee considered your letter at its meeting on 2 November 2017.

We note that you were only able to provide limited responses to some of our questions, as negotiations were at an early stage. As some months have now passed, we look forward to a more detailed update on the following:

- Whether an existing UK authority could adopt the role of an e-card coordinating authority, or if this would require a new undertaking.
- Confirmation of whether the Government expects that the costs associated with setting up and operating the e-card system would be recovered entirely through charges for using the service.
- The progress of the text regarding obligations on insurers to provide information for the e-card on request and if the Government believes that an acceptable balance has been found between the needs of services providers and the insurance sector.
- The progress of the text regarding the impact of the proposed application process on coordinating authorities, particularly the specified timeframes for processing e-card applications.

Please would you also confirm if the Government is now clear if EU subsidiaries of third country undertakings would be able to apply for an e-card and the Government's policy position in this regard?

We would also like to know the expected timetable for consideration of these proposals by Council, and the length of time proposed for the "start-up period" following their adoption.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 20 working days.

3 November 2017

Letter from the Rt Hon Lord Henley, Parliamentary Under Secretary of State

Thank you for Lord Whitty's letter dated 3rd November 2017 with questions on the proposed Regulation and Directive introducing a European services e-card (ESC) and related administrative facilities.

The Council Working Group considering the ESC proposal completed its read-through of the Directive and Regulation in July 2017. The Estonian Presidency produced two issue papers for member states to discuss over the autumn, which presented options on ways to take the proposal forward. These included detailed discussion points on the overall objective of the e-card proposal, the information obligations on member states, the potential for administrative simplification, the proposal's insurance related provisions and textual amendments to define the scope and effect of the ESC.

Due the range of diverging views raised by member states and limited time available to address them, the ESC will not reach General Approach at the November meeting of the Competitiveness Council.

In answer to your specific questions:-

Whether an existing authority could adopt the role of an e-card coordinating authority, or if this would require a new undertaking?

The nature, role and responsibilities of the coordinating authorities in both the home and host member states form a substantial part of the ongoing discussions on the ESC at technical level.

At this stage, we envisage that the coordinating authority in the UK will be the Department for Business, Energy and Industrial Strategy (BEIS), with no new undertaking required. The proposal outlines that the ESC portal will be established through the Internal Market Information System (IMI). In the UK, BEIS serves as the coordinating authority for the IMI and Point of Single Contact, and manages information requests via existing portals for UK and EU businesses. I will inform the Committee if expectations around the role of BEIS as a coordinating authority change.

Confirmation of whether the Government expects that the costs associated with setting up and operating the e-card system would be recovered entirely through charges for using the service?

The ESC aims to increase the efficiency and transparency of the administrative processes that service providers go through when trading across borders in the single market. Technical discussions around the operation of the ESC system and the associated costs are ongoing, but it is the UK's view that these costs and any charges businesses face must be proportionate.

The progress of the text regarding obligations on insurers to provide information for the e-card on request and if the Government believes that an acceptable balance has been found between the needs of services providers and the insurance sector?

The Commission's proposals aim to help service providers in different sectors meet cross-border requirements for insurance. Technical discussions on these provisions are still ongoing. There remains significant potential for revisions to the text on the role and requirements placed on insurance undertakings to provide proof of insurance when required by a service provider, which could alter the effect and impact of the measures.

There is not yet a clear way forward. The UK continues to press for an outcome that balances the needs of service providers and the insurance sector that will minimise any costs, while ensuring the ESC effectively addresses the barriers that services businesses face when trading across borders.

The progress of the text regarding the impact of the proposed application process on the coordinating authorities, particularly the specified timeframes for processing e-card applications?

The specific commitments of coordinating authorities and the relevant timescales for delivery are likely to continue to shift throughout negotiations. The Commission is firm that the ESC remains a voluntary arrangement, so the impact on coordinating authorities will depend on the level of take-up from service providers. The range of sectors to be covered by the ESC is also being negotiated, so the scale of applications is not yet known.

In ongoing discussions, the UK has highlighted the need to avoid coordinating authorities being subject to unrealistic timetables for completing application processes - alongside the specific responsibilities placed on home and host member states to verify the relevant details of ESC applications.

Whether the Government is now clear as to if EU subsidiaries of third country undertaking would be able to apply for an e-card and the Government's policy position in this regard?

The draft ESC Directive confirms that the e-card is available to providers established in a member state. The Directive confirms that subsidiaries of companies from third countries established in a member state should be able to apply for an e-card, in so far as they have met all requirements by the host member state, including requirements for limited liability companies and national rules on registration of foreign branches under company law.

The ESC Directive and Regulation will become enforceable as law applicable to all EEA member states. We support the EU's view that EU subsidiaries of third country undertakings (i.e. those with EU legal personalities) are treated as EU companies as set out under Treaty Law.

What is the expected timetable for consideration of these proposals by Council, and the length of time proposed for the "start-up" period following their adoption?

The Presidency is yet to announce further Working Group discussions on this proposal. At present, we expect negotiations to continue into at least early 2018. The proposed implementation period for the ESC after entry into force of the core legislation is two years.

I appreciate the Committee taking the time to review this proposal in detail and will keep you updated on the progress of the discussion.

29 November 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPROVAL AND MARKET SURVEILLANCE OF MOTOR VEHICLES AND THEIR TRAILERS, AND OF SYSTEMS, COMPONENTS AND SEPARATE TECHNICAL UNITS INTENDED FOR SUCH VEHICLES (5712/16)

Letter from Jesse Norman MP, Under Secretary of State, Department for Transport

Thank you for your letter of 27 April that confirmed your Committee's agreement to clear this proposal from scrutiny. I am pleased to report that a General Approach was reached at the Competitiveness Council meeting on the 29 May. We were content with the final version of the Council text and able to vote in support of it.

In most areas the position remained as set out in Andrew Jones' letter of 19 April. The main area that was still open for discussion in the run up to the vote was the power in Article 90 for the Commission to fine non-compliant manufacturers where Member States have not taken action. We felt that there was a careful balance to achieve between ensuring that the Commission's role in market surveillance carries some weight, but that it does not cut across the actions of Member States or create legal uncertainty. A revised version of the provision was developed that further helpfully clarified when the Commission can take action. This was considered acceptable to the majority of Member States, including the UK.

The Council has now entered the trilogue negotiations with the European Parliament. These have been positive so far with early discussion on where we may be able to find consensus and the potential for compromise. As Andrew Jones indicated in his last letter, the Repair and Maintenance provisions are likely to be a difficult area as the two positions are particularly far apart. In preparation for this we have been meeting with key stakeholders to understand better the issues on both sides.

Your letter of 27 April mentioned the concern regarding the separation of design and testing services, which was raised during the Sub-Committee's visit to the testing facility at Millbrook. The European Parliament did not amend the relevant section of the text, and so I do not expect it to be part of the trilogue discussions or to change in the final text.

We are optimistic that the Estonian Presidency will be able to make good progress on this file, and hope that we will conclude the negotiations either during their term or under the Bulgarian Presidency.

7 November 2017

Letter from Jesse Norman MP, Under Secretary of State

I am writing to update your Committee on further developments on this proposal, following my letter of 7 November. We are now nearing the end of the negotiations, and expect the proposal to be put to the Council of Ministers before Christmas or early in the new year for final agreement to a deal with the European Parliament, preceded by a Coreper stage in mid-December.

You will recall that the original proposal was published in the aftermath of the Volkswagen emissions scandal, although it had been in preparation for some time before that. It was important to restore trust in the EU vehicle approval system, and the Government shared the proposal's overall objectives of raising the standards of all EU type approval authorities and ensuring that manufacturers face a level playing field in seeking the approvals needed to place their vehicles on the EU market.

We were particularly supportive of the provisions regarding market surveillance, peer review of type approval authorities and joint assessments of technical services, the forum for the sharing of information between Member States and the Commission, and the enhanced safeguarding clauses. As set out in Andrew Jones' letter of 19 April, the Government was broadly content with working group negotiations on these issues; we have managed to retain the key measures of the proposal, against the early reluctance we saw from a range of delegations. We were also successful in removing the few provisions which we considered to be unhelpful, ahead of the Council General Approach in May.

The European Parliament's position on the proposal was in general more radical than the Council General Approach. In particular, MEPs wanted a role for the Commission in compliance verification, where they wanted an obligation for the Commission to carry out testing. On market surveillance they wanted a higher minimum number of tests related to annual registration numbers.

The Estonian Presidency opened trilogue discussions with representatives of the European Parliament to try to reach an agreement. These discussions have made good progress in achieving compromises, including at the most recent meeting on 23 November. In relation to market surveillance activities, the number of tests of vehicle emissions and safety, as well as checks on type approval documentation has been increased, but is similar to the current level of activity in the UK. The discussions on the repair and maintenance provisions have been improved to provide access to information for smaller businesses outside the main dealer network.

One further trilogue meeting is planned on 7 December to resolve a small number of outstanding issues. These concern the role of the Commission in audits of type approval authorities where there are already some provisions, and the termination of validity of type approvals. While we would welcome further improvements in these areas we recognise that compromise between the two positions is necessary. The UK's main objectives for the proposal have already been largely achieved regardless of the outcome of this final discussion.

I recognise that the likely timing of the final trilogue, Coreper and the potential Council agreement make it unlikely that the Committee will be able to consider a further update on the final trilogue beforehand. So I wanted to provide you with as much information as possible at this stage and assure you that we are confident that the expected final deal will be a positive step towards improving the type approval system and restoring trust in it. The package represents a fair balance between the obligations on manufacturers with the need to avoid cost burdens on consumers.

Given the importance of this dossier to our automotive industry and to consumers, the role the UK has played in negotiations the UK intends to support this proposal when it is put to the Council of Ministers.

5 December 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 1996 CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES (6987/16)

Letter from Lord Prior, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 15 September which sought further information in relation to the above proposal. We are continuing to constructively engage in discussions on this file.

You asked which aspects of the text lack clarity and transparency, and how the text could better balance workers' rights and business needs.

Clarity and transparency

Good progress has been made in this respect, for example through the removal of the proposal on subcontracting, as well as the proposed addition of text to clarify how to assess whether workers have received the correct level of remuneration and how allowances should be considered. In addition, the Council approach of setting out that additional rights will apply to 'long-term' postings is clearer for workers and employers than the approach taken in the original Commission proposal.

We are continuing to seek clarity on proposals about how the European Platform on Undeclared Work can address fraud and abuse in posting workers.

Balancing the rights of workers and the needs of business

We have sought balance between the needs of business and the protection of workers at various points, for example we have supported the insertion of text which would clarify that the amount and accuracy of information on national laws and practices provided by the Member State in question could be taken into account when assessing the sanctions on an employer deemed not to have fully complied. This measure underlines the importance of clarity about employer responsibilities in supporting compliance however we have been clear that there must be no suggestion that it would prevent workers getting their full rights (eg entitlement to back pay where they have been underpaid).

General Approach

Negotiations recently resumed at Council working group level. The Presidency introduced an amended text which attempted to find a balance between the two sides of the debate on the file. The text was relatively well-received, with many Member States agreeing that it better reflected the spread of views in the working group. However, the Council is still divided between those that would vote in favour of the new text and those that would oppose it.

Discussions will continue at Coreper and at the Employment and Social Policy Council (EPSCO) on 23 October, where it is anticipated the Presidency will seek a General Approach.

The UK has continued to input constructively on the objectives that we have previously set out to the Committee. I recently obtained collective Government agreement on a UK position on the proposed revisions to the Directive to confirm that we should be seeking to improve the clarity and transparency of the revision and limit the impact of the proposal on UK businesses posting workers abroad.

The Directive does not create the same difficult issues for the UK as it does for some other Member States. Existing UK employment protections mean that the new proposal would have little effect on the UK in respect of workers posted here. It could lead to increased costs and administrative burdens for UK firms posting workers to other Member States, but the available analysis suggests that the impact of these is likely to be relatively low.

Throughout negotiations, the UK has continued to contribute to the discussion seeking to minimise burdens added to business while ensuring the right balance of protections for workers. Although we expect that discussion will continue on the proposal up to EPSCO, the text currently being considered by Council does reach a reasonable balance on these issues, which means that the UK policy objectives have been fulfilled as the text currently stands.

I would therefore like to seek Parliamentary scrutiny clearance for the UK approach to the upcoming Coreper and EPSCO discussions on this file. I will update the Committee with further information after EPSCO has taken place.

6 October 2017

Letter from the Chairman to Lord Prior, Parliamentary Under Secretary of State

Thank you for your letter dated 6 October 2017 concerning the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 19 October 2017.

We appreciate your clarification of the Government's negotiating priorities and final policy position ahead of the EPSCO meeting on 23 October, at which the Estonian Presidency is expected to seek a General Approach.

The Sub-Committee has decided to clear this document from scrutiny. We look forward to an update on the outcome of the EPSCO meeting in due course.

19 October 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL TO EMPOWER THE COMPETITION AUTHORITIES OF THE MEMBER STATES TO BE MORE EFFECTIVE ENFORCERS AND TO ENSURE THE PROPER FUNCTIONING OF THE INTERNAL MARKET (7621/17)

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 15 September about the above Directive. You asked about the details of our negotiating position and the specific changes the Government is advocating.

The Government broadly supports the Directive's objective of ensuring national competition authorities (NCAs) have the appropriate tools to enforce effectively the competition rules.

Article three provides that the powers in the Directive should be exercised in accordance with general principles of EU law and the Charter of Fundamental Rights of the EU. The UK has made the point that this article is unnecessary, as all powers derived from EU legislation must be exercised in accordance with the general principles of EU law and the Charter. Similar provision is not made in the operative articles of other directives.

You asked specifically about the Government's position on the leniency provisions in articles 16-22. The Government is concerned about Articles 21 and 22 of the proposal. As currently drafted, article 21 restricts the ability of NCAs to request from a summary applicant information about the infringement while the European Commission considers the application. This can be important to ensure a correct and expeditious allocation of cases between the European Commission and NCAs. The Government is also concerned that the 5 day provision in Article 21(7) could lead to competing claims as to which company is the first to apply for leniency at the national level. On this basis, the Government's view is that the Directive as drafted could compromise the efficacy and efficiency of leniency regimes across the EU. As currently drafted, article 22 would limit the CMA's discretion in granting type B immunity. Several other Member States have expressed concerns about the current drafting of these Articles. The UK will support amendment of these articles in future Working Group meetings with the aim of removing these problems.

The Directive is also overly restrictive on the use of information. As drafted, it would:

a. stop information collected by NCAs from being used to apply sanctions to natural persons (such as director disqualification in the UK);
b. preclude the disclosure of information to comply with criminal disclosure obligations, which are important to guarantee rights of defence and the right to a fair trial; and
c. preclude disclosure of information even where there is an overriding public interest, such as where the information reveals serious criminality.

Several other Member States have also argued that these provisions are incompatible with national disclosure obligations in their jurisdictions. The UK will support amendment of the provisions on the use of information in future Working Group meetings with the aim of allowing the use of information on the grounds listed above.

You also asked about the timetable and progress of discussions in the Working Group. On 9 October, the Working Group finished discussing the original proposal. The Council President will now draft a first compromise proposal, which will be considered at the next Working Group meetings on 20 November and 8 December. The European Commission aims to secure the adoption of the Directive by Spring 2019, and the current proposal provides for a 2 year implementation period.

16 November 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON WORK-LIFE BALANCE FOR PARENTS AND CARERS AND REPEALING COUNCIL DIRECTIVE 2010/18/EU (8633/17)

Letter from the Chairman to Margot James, Minister for Small Businesses, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter received on 22 September 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 16 November 2017.

Your letter helpfully set out further details of the proposal's provisions for leave, and information on comparable leave provisions under the current UK framework. As negotiations develop, we look forward to a full account of the Government's policy position in relation to each of the proposed types of leave.

In relation to carers' leave, we are interested to know the Government's view on the apparently narrower scope of provisions under the draft Directive, compared to similar concepts in the UK, and whether the text should take a more flexible approach to carers' leave.

Regarding paternity leave, your EM noted that the proposal may create an additional entitlement for workers who work fewer than five days a week, and that further clarification was required on how and when this leave might be taken. Please would you provide an update on these points?

We are aware of the European Association of Craft, Small and Medium-sized Enterprises' (UEAPME) concerns that the proposed Directive would increase labour costs for small businesses and harm their competitiveness. Has the Government undertaken its own assessment in this regard, and the implications of increased business costs for the proposal's aim of increasing female participation in the workforce? If so, please share the outcome of this assessment with us.

We have decided to retain the file under scrutiny. We look forward to a response to this letter, and an update on the expected timetable for Council consideration of this proposal, in due course.

16 November 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - A DIGITAL SINGLE MARKET STRATEGY FOR EUROPE (8672/15)

Letter from Lord Whitty on behalf of the Chairman, to Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 24 August 2017 on the above communication. The EU Internal Market Sub-Committee considered this at its meeting on 19 October 2017.

We welcome your responses to the questions outlined in our previous letter, including the helpful overview of the Government's position on the initiatives outlined in the digital transformation section

of the communication. We are content to clear the document from scrutiny and do not require a response to this letter.

20 October 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL SETTING OUT THE CONDITIONS AND PROCEDURE BY WHICH THE COMMISSION MAY REQUEST UNDERTAKINGS AND ASSOCIATIONS OF UNDERTAKINGS TO PROVIDE INFORMATION IN RELATION TO THE INTERNAL MARKET AND RELATED AREAS (8765/17)

Letter from Lord Prior of Brampton, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 8 September 2017 and for agreeing an extension to the deadline for responding to enable me to provide the Committee with the most up to date information on Working Group discussions. I will respond to your questions in turn, with a general update at the end of the letter.

Please would you explain if further clarity has been gained from the Commission regarding:

1. The precise conditions that must be met before the SMIT could be used

The Commission's Impact Assessment contains a useful description of the conditions that must be met before the SMIT could be used:

"The SMIT would not be used routinely, but rather as an exceptional, 'last resort' tool following a case-by-case assessment by the Commission. In order to issue an information request, the Commission would first need to formally adopt a Decision stating its intention to use SMIT and showing that the following main conditions are fulfilled:

1. There is enough information available suggesting the existence of a serious problem with the application of Union law undermining the attainment of important Union policy objectives in relation to the aim of establishing and ensuring the functioning of the internal market, most notably in terms of economic or social impact; and
2. The information to be requested is required for the performance of the tasks entrusted to the Commission by the Treaties in the area of the Internal market, notably proving the existence of serious obstacles to the functioning of the internal market or calibrating the Commission's response to such obstacles; and
3. The information is not available elsewhere, meaning it may not be obtained or could not be obtained timely enough through other means."

On the first condition, the Commission has explained in Working Group discussions that it would consider that a "serious problem" existed if there were "breaches of the fundamental freedoms under the Treaty which create particular problems for citizens or businesses wanting to move or carry out transactions between Member States, or where there may be a systemic impact beyond one Member State" (extract from the Commission- *Communication on EU law: Better results through better application*[2], quoted in Working Groups).

On the second, there has been some debate as to whether the proposal as drafted has gone beyond the scope of the "internal market" set out in this condition. The Commission has explained that some matters *not* related to the internal market could be covered by the regulation, to the extent that the sector-specific legal basis allows. I expand on this point in answer to your specific question on the proposal's legal bases below.

[2] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN

On the third, the Commission has stated that its determination of whether the information could be obtained in a "timely" way would depend on the situation; the timescales for infringement cases would differ from other situations. The Commission did not provide any further clarification, but in the Working Group undertook to reflect upon the lack of clarity on timing.

In terms of whether the information could be obtained by "other means", the regulation states that the Commission shall only use the SMIT power if:

a) the information is not contained in a publicly available source; and
b) the information has not been provided by a Member State upon request by the Commission; and
c) the information has not been provided by a legal or a natural person.

It is our understanding from the Commission's explanations that the Member State would have the opportunity to provide the information upon receipt of the enabling Decision. Only if the Member State could still not provide the requested information would the Commission then use the enabling Decision as a basis to address a request directly to the undertaking or association of undertakings involved.

2. The practical application of safeguards included in the proposal

The Commission has confirmed that the main safeguards in the proposal are procedural. First, each enabling Decision stating the Commission's intention to use the SMIT must be adopted by the College of Commissioners. This Decision must include a description of how the conditions described above have been met.

Secondly, following the adoption of this Decision, the Commission could proceed with a "simple request" in order to obtain the information from the firms in question. This informal request would not create any legal obligations on the company. No sanctions would apply other than for deliberate deception. The Commission could also make a formal request i.e. a second Commission Decision, which could entail sanctions for late, incomplete, or misleading replies. The Commission has said that the simple and formal procedures are not necessarily sequential, but it considers that a formal request would be a rare occurrence.

Further safeguards include the targeting of respondents: each enabling Decision – under the scrutiny of the College - must also set out a summary description of the information to be requested and the criteria for selecting the addressees of the request for information.

The Commission's Decision could be reviewed by the CJEU, and in issuing a request for information to an undertaking, the Commission would have to indicate that undertaking's right to take such action if there were grounds to challenge the Commission for not having met all the conditions set out in the Regulation. Equally, it is our understanding that a Member State could also take action against the Commission upon receipt of the initial Commission enabling Decision.

3. Measures to protect confidential information, and details of exemptions that would apply in this regard

The Commission has said that it considers the regulation to be in line with the Charter of Fundamental Rights of the European Union with regard to respecting business secrecy.

Undertakings would have the option of providing the Commission with two versions of the information: a confidential one for the Commission and a non-confidential one to be distributed to the Member State(s) concerned. The Commission has stated that, in practice, the full return would be redacted to produce a non-confidential version.

The Commission would review the confidential version submitted and make its own decision on whether the information should indeed be treated confidentially as requested. The Commission's interpretation of 'confidential', as explained in Working Groups, is "anything which undermines the commercial objectives of the company". The Commission has also stated that it will consider what is confidential in line with EU case law, which sets out the following criteria: i) the data is only known to a limited number of people, ii) disclosure is liable to cause serious harm, including loss of reputation, and iii) that the data is objectively worth protecting, such as business secrets.

Any decision to disclose additional information to others would be open to appeal by the company for at least one month before the information was revealed in any way. Member States have expressed concern about the appeals process, but the Commission has not expanded any further; we will continue to seek clarity on this point.

We have not yet received any further substantial clarification on the exemptions outlined in Article 8. This article states that the information can be transmitted to other parties or made public if: it is in a form where the undertaking cannot be identified (the Commission has given the example of an impact assessment), where the Commission has obtained the agreement of the respondent to publish the information, or where the disclosure of such information to a Member State is necessary to substantiate an infringement under the scope of SMIT and the respondent has had the opportunity to make their views known and use any judicial remedies available to them.

The Commission has confirmed that the Regulation regarding public access to Commission documents[3] would apply, but that any request to view confidential information obtained by the SMIT could be refused using the exemption in that Regulation. This exemption states that the institutions can refuse access to a document where disclosure would undermine the protection of commercial interests. The Commission has also said that the exemptions around using the information in infringement proceedings are modelled on similar powers the Commission has in the field of State Aid investigations.

4. The potential inclusion of third country undertakings operating in the Single Market.

We have not received any substantial clarification on this point in Working Groups, and we will seek further information in any future discussions.

Our initial view is that the proposed SMIT power is potentially broad enough to apply to any company operating in the Single Market regardless of whether it is established in an EU Member State. However, there remains a practical question about enforcement. In Working Group, the Commission has confirmed that it would have no powers to fine companies established outside the EEA for failing to provide information.

Your EM also mentions that there is a question of compatibility of the legal bases provided by the Commission for the proposal. Has the Government gained further clarity in this regard?

We have not received any further substantial clarity on this point. Questions concerning both the validity and compatibility of the legal bases for the proposal have been raised at Working Groups. The Council Legal Service (CLS) were asked to provide advice which they did on 3 October 2017. The CLS's opinion is that none of the legal bases cited in the proposal is valid. It has therefore seen no need to consider compatibility of legal bases at this stage.

The CLS opinion notes any proposed act "must do more than touch upon or have repercussions for" the Treaty policies which form legal bases. In view of the broad ambit of key provisions of the proposal, and the lack of evidence demonstrating the real need it is addressing, the CLS concludes it is not directly linked to or genuinely pursuing the aims of the Union policies established by the first six Treaty articles cited (43(2) (agricultural policy), 91 and 100 (transport), 114 (internal market), 192 (environment) and 194(2) (energy)) and for this reason they are not valid legal bases.

The remaining legal basis, article 337, allows the Commission to make provision to collect information required to perform its tasks. In contrast to the very wide information powers proposed by the Commission, the opinion cites Regulation 2186/93 as an example of the use of article 337; this regulation has a detailed annex identifying exactly how information collected would facilitate Commission tasks. And again, whilst it is arguable that the collection of information may assist with infringement proceedings, the CLS believes the Commission has not sufficiently demonstrated the need for a power as proposed. According to the CLS opinion, of 1654 infringement cases examined in the period 1997-2016, the number in which further information powers may have been useful was just 17. For these reasons the CLS concludes the proposal cannot validly be based on article 337.

[3] REGULATION (EC) No 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

There was wide support from Member States in the working group for the CLS opinion. The Commission has indicated that it will circulate its own written opinion in the next few weeks; the Government will consider this before finalising its own view. Should the proposal continue to be discussed in its current form, we will continue to seek assurance that the legal base or bases (and, potentially, their compatibility), are appropriate.

Would information held by the CMA be considered as already available to the Commission, and therefore out of scope of the SMIT?

Since the Explanatory Memorandum was submitted, we have concluded that we cannot assume instances where SMIT would be used to request information from businesses in the UK would be limited by virtue of the CMA's activities in collecting information (see paragraph 35 of the EM). We will undertake further analysis of the potential financial implications for UK business in the light of this, and update you in due course.

Confidential information held by the CMA is not generally available to the European Commission. The CMA's use of information that relates to businesses is governed by part 9 of the Enterprise Act 2002. Based on these provisions, the CMA would have a gateway to share confidential information on a business which it had obtained in the course of its functions with the European Commission in the following circumstances:

- if it received the relevant consent of that business
- for the purposes of an EU obligation e.g. in connection with EU consumer or competition law (but under EU competition law that information would not then be available to the Commission for the purposes of the Single Market rules); and,
- for the purposes of facilitating the CMA's statutory functions.

The CMA can also share information with an overseas authority in specified circumstances in connection with that authority's enforcement of competition and consumer protection law. However, the CMA cannot share information on this basis if it was obtained by it in connection with a merger or market investigation.

Even where the CMA has a gateway to share information, it must carry out a balancing exercise having regard to whether disclosure would be contrary to the public interest, whether the disclosure of commercial information might significantly harm a business' legitimate commercial interests, and the proportionality of disclosure.

Each case would need to be determined on its merits, but the Government's view is that a transfer of information held by the CMA to the Commission (other than with consent or in connection with obligations under EU competition and consumer law) would only in very limited circumstances be likely to fulfil the relevant criteria for information to be shared under the Enterprise Act.

Has the Commission provided examples, outside of public procurement exemptions, where being able to obtain firm-level data would have improved compliance with or enforcement of Single Market rules?

The Commission has provided the following examples in Working Group discussions.

1. Roaming: the Commission had initially looked at roaming charges from the perspective of competition but had found there was no abuse of dominant position. However, the Commission considered there was still a clear internal market problem, which it decided to solve through roaming legislation. In hindsight, the Impact Assessment for this first proposal would have had insufficient evidence to meet current Regulatory Scrutiny requirements.

2. The Commission has said that it considers 1 in 20 single market cases at the CJEU are lost because of a lack of sufficient company-level evidence. According to the Commission, the SMIT could have enabled the Commission to obtain the necessary information from private parties in order to win these cases. The Commission has argued that losing such cases leads to non-tariff barriers to trade. The Council Legal Service disputes this figure, arguing that, of 1654 infringement cases examined in the period 1997-2016, the number in which further information powers may have been useful was just 17 (i.e. around 1 in 100).

3. The Commission has also cited the example of where a Member State has extended a contract with a concessionaire without a tender, which could have impacts in the billions of euros.

4. Finally, the Commission has spoken of the calibration of the Capital Requirements Directive and argued that it is difficult to gauge accurately the amount of capital banks should be required to hold.

Please would you also confirm if the SMIT would only apply to Single Market breaches involving more than one Member State?

Article 5 of the proposed Regulation outlines the conditions the Commission must satisfy in order to make an information request. This includes a requirement for the Commission to provide a summary description of the alleged serious difficulty of a "cross-border dimension".

In this regard, the Commission has again referred back to its *Communication on EU law: Better results through better application*, which describes the breaches it wishes to target as those "which create particular problems for citizens or businesses wanting to move or carry out transactions between Member States, or where there may be a systemic impact beyond one Member State."

Our understanding is therefore that whilst an information request could be issued to address a potential breach within one Member State, the breach would need to be shown to have a cross-border dimension or *impact* more than one Member State.

The Commission has said in Working Groups that the cross-border dimension could be more clearly stated in future iterations of the text.

Update on discussions in Working Group

Discussions in Working Groups to date have made it clear that a large number of Member States are highly sceptical of the proposal. Concerns have been raised about burden on business, adequate safeguards and the scope. No Member State seems strongly supportive of the proposed new powers for the Commission.

he most detailed discussion has been on doubts about the seven proposed legal bases. As explained above, the Council Legal Service's Opinion of 3 October concluded that none of the bases could support the proposed powers. The Commission has indicated that it will circulate its own written opinion in the next few weeks.

At the working group on 17 October, there was wide support for the Council Legal Service's opinion, and 12 Member States presented a non-paper supporting the Council Legal Service analysis and expressing doubts about the proposal's added value. As such, it is currently unclear how and whether progress can be made in Council on the proposal unless the Commission makes substantial changes to it. The Working Group will probably be invited to review the Commission Legal Service's opinion in due course.

25 October 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ESTABLISHING A SINGLE DIGITAL GATEWAY TO PROVIDE INFORMATION, PROCEDURES, ASSISTANCE AND PROBLEM SOLVING SERVICES AND AMENDING REGULATION (EU) NO 1024/2012 (8838/17)

Letter from Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 8 September 2017. I will respond to your questions in turn. I hope that you find this information useful.

Could you clarify which of the procedures listed in Annex II the UK does not currently provide fully online?

According to article 5 of the draft regulation, the procedures listed in Annex II would have to be accessible 'fully' online. This is defined as "where identification, provision of information, supporting evidence, signature and final submission can be done electronically at a distance and via a single communication channel and if the output of the procedure is also delivered electronically." Our initial

assessment is that the UK does not currently provide 'fully' online access, within the meaning of this definition, to any of the procedures listed. This appears to be a challenge for a majority of Member States and we are working to ensure more flexibility in the Council text.

Could you also provide more detail on how the Government thinks the quality requirements could be amended or extended to focus more closely on user experiences?

The proposed Regulation's quality requirements for information (article 7) and procedures (article 8) could be more closely aligned with the Government Digital Service's (GDS's) own Standards, available at this link: https://www.gov.uk/service-manual/service-standard. This sets out 18 point criteria for high quality digital services.

GDS has advised that when creating online content or designing digital services, it is important to focus on making things as simple as possible; this saves users time and money, and is more equitable. A specific example of how the quality requirements in Articles 7 and 8 could be amended or extended to mirror the GDS's Standards would be to refer to how the service should be simple and intuitive to use, helping users to succeed the first time in completing their task. Another relates to the requirement in Article 8 for a set of information about the procedures, including references to legal acts, to be provided to users before completing a procedure. GDS's preference is for the principle of 'progressive disclosure'. This means giving users only the information they need to support the decision they are making at that point in the process. This is more effective than exposing the user to the full complexity of the rules upfront. Citizens can be helped to make an informed decision through a clear, robust eligibility checking process. Article 8 could be amended to reflect this principle.

Could there be a facility for citizens and businesses who have travelled to live, work or do business in another Member State to share their experiences as part of the gateway initiative?

It is intended that there will be a user feedback mechanism. This would allow users to comment anonymously about the quality of information they view or the services they access. A 'gateway coordination' group will also be established to support the implementation of the gateway and is tasked with responding to problems with quality and suggestions for improvement.

We would be grateful if you could tell us:

- the Government's view on the estimated translation costs per Member State outlined in section 6.1.5 of the Commission's Impact Assessment;

Our view, and that of several other Member States, is that the costs in section 6.1.5 of the Commission's Impact Assessment underestimate the cost of translating all of the information listed in Annex I and the instructions accompanying any related procedures. GDS has estimated that over 3,000 pages of content would need to be translated in the UK, as opposed to the Commission's estimate of 500 pages (which is also the number of pages which could be funded by the EU budget).

The Commission estimates translation would cost €65 per page. Based on the UK's primary experience of translation, we know that currently it costs us about £200 (€225) to translate a page into Welsh. GDS also estimates that they make around 5,000 changes to this content every year.

Even taking into account the fact that Welsh translation is more specialised, and that our and the Commission's assumptions on page length may differ, we anticipate that the cost of translating pages would be higher than the Impact Assessment suggests.

The Commission states in the Impact Assessment that these costs will not be additional costs for all Member States, since many of them already translate information in at least one other language. However, the Commission has clarified that Member States with more than one national language will have to identify an *additional* language. The UK already translates some information into Welsh, but extending this would not comply since it is not an "official language of the Union."

-which, if any, of the areas of information outlined in the proposal the UK already provides in another language; and

GDS has informed us that around 1% of the total content on GOV.UK is translated into Welsh. It is therefore unlikely that much of the information outlined in the proposal is already provided in Welsh.

Pages in languages other than Welsh are generally published by the Foreign Office, Department of International Development, and the Department of International Trade. They are typically news stories and speeches rather than guidance content.

- whether EU funds would be available to cover any of the translation costs.

The proposal states that the general budget of the European Union will cover the costs of translation of information and instructions for completing procedures up to a maximum volume per Member State. The Commission has said in the Working Parties that this funding will be limited to translation of 500 pages per Member State.

You also suggest that Member States should be given more flexibility in deciding what information to translate. Would this not risk inconsistency in the accessibility of information and procedures for citizens and businesses across the Single Market? Are there any particular areas of information listed in Annex I which the Government believes are unnecessary to translate?

If adopted as drafted, the regulation would require Member States to translate all the content in scope into another EU language, regardless of whether it would be relevant or necessary.

We could support greater flexibility over what each Member State is required to translate as one way of lessening the burden of this legislation whilst preserving its intent. This could be achieved by requiring each Member State to translate only those parts of their online content that they deem most useful in genuinely supporting free movement within the Single Market.

Some areas of information listed in Annexes I and II, such as 'Vehicles in the Union,' are probably used less frequently in the UK than in other Member States in a cross-border context and thus we would consider it unnecessary to translate them.

We would welcome an update on discussions in Working Group, including whether there has been confirmation of when this proposal might be tabled for a General Approach.

Whilst Member States are still undertaking their cross-government consultations and forming positions, there has been an emerging consensus that the Single Digital Gateway concept could be welcome. Member States have identified a broad range of drawbacks in the proposal; however most delegates are neither wholly positive nor totally negative at this point.

Many Member States have questioned the scale of the Commission's ambition and the technical feasibility of what is required. There have been many calls for more flexibility to design online procedures to suit national user needs and legal systems. Most delegations agree that the Commission has underestimated the costs and extent of infrastructure upgrades Member States would need to implement and fund.

The Presidency has been holding frequent Working Groups and intends to seek a General Approach at the Competitiveness Council on 30 November.

We will write again in November to update the Committee on revisions to the text, our discussions with key stakeholders and the Devolved Administrations, and to seek scrutiny clearance in advance of the Council meeting.

20 October 2017

Letter from the Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

I am writing to you to give an update on the Council negotiations on the Single Digital Gateway proposal (SDG). My predecessor Lord Prior wrote to the Committee on 20 October responding to the questions you set out your letter of 8 September. As I indicated in that letter, the Presidency has indicated there is a possibility it will take a General Approach at the Competitiveness Council on 30 November. Given that the Committee might not have opportunity to ask further questions, I am requesting a scrutiny waiver in order to participate actively at Council.

In the next few weeks of negotiations, we will be focussing on amending the proposal to provide greater flexibility for Member States so as to ensure better value for money.

In particular, we will press for areas of online information and provision of digital services, particularly the Annex II list, to be limited to those where there is greatest evidence of cross-border benefit. We intend to seek more flexibility for Member States in rolling-out online capability, allowing them to respond to users' needs and to determine an appropriate level of security and assurance.

We will continue to argue that the translation requirements do not represent value for money and support amendments which lessen the burden of this legislation whilst preserving its intent.

On 'quality requirements', we will continue to support the principle of robust quality and quality monitoring requirements, but press for text which better reflects user needs.

Finally, the proposal implies that Annex II procedures (and some others) would have to conform to the "once only" principle, if a "technical system" for this can be developed. This is aimed at avoiding the need for users to submit repeatedly the same information or evidence to different EU authorities. There are numerous technical challenges facing one proposed solution currently being piloted and we consider more work is required on its feasibility. Whilst the Government supports the idea of a "once only" principle, we will argue it is premature to put this into law now.

The last two Working Groups have revealed that there are still significant concerns among Member States about the proposal's wide scope, prescriptive quality requirements, tight timescales and high costs. Even Member States, such as the UK, that are advanced and ambitious in the provision of e-government services, are seeking a more balanced approach. In particular, several Member States have pushed back against the non-discrimination, 'fully online' and translation requirements. Member States have raised concerns about the pace of the negotiations and the length of the implementation period. The Presidency has attempted to address some of these concerns in the latest revised text (for example, by extending the implementation period for certain obligations from two to four years), but it is increasingly clear that there would have to be a further watering down of the proposal to secure a qualified majority in support of the text by end of the month. Our view is that these changes will have to focus on reducing costs and introducing more flexibility in the provision of services.

We will continue to work with other Member States to improve the text and will be monitoring progress very carefully in upcoming working groups to determine whether enough has been done to address the UK's concerns ahead of a potential General Approach.

The UK is advanced and ambitious in the provision of e-Government. Facilitating citizens' access to online information and services across the EU would strengthen the Single Market and enhance the opportunities for UK business to benefit from better online services in EU Member States. As our concerns on the proposal are shared by most other Member States, coupled with the Presidency's desire to make rapid progress, I envisage few circumstances in which the UK would not be able to support the text put to a Council vote.

I request a waiver to participate fully at Council on the condition that I update the committee afterwards.

7 November 2017

Letter from the Chairman to the Rt Hon Lord Henley, Parliamentary Under Secretary of State

The EU Internal Market Sub-Committee considered the letter from your predecessor, Lord Prior, dated 20 October 2017, and your letter, dated 6 November 2017, on the above proposal at its meeting on 16 November 2017.

Thank you for clarifying the Government's specific concerns regarding this proposal and your negotiating priorities ahead of the Competitiveness Council on 30 November. We note that your concerns are shared by several other Member States.

In light of your confidence that these issues can be resolved, enabling the UK to support the text ultimately put forward for General Approach, we have decided to grant your request for a scrutiny waiver.

We look forward to a comprehensive update following the Council, particularly regarding how any agreed text addresses the concerns outlined in your most recent letter.

Letter from the Rt Hon Lord Henley, Parliamentary Under Secretary of State

Thank you for your letter of 16 November 2017 regarding the above proposal. I would also like to thank the Committee for granting a waiver to enable the UK to participate at the Competitiveness Council on 30 November. Below is a comprehensive update, as promised.

Update following Competitiveness Council

Negotiations on the Single Digital Gateway Regulation continued to make rapid progress throughout November and a General Approach was agreed at the Competitiveness Council. All Member States supported the Presidency's compromise text (enclosed), apart from Belgium who abstained on the grounds that the translation requirements were not compatible with their national language arrangements.

Throughout the text's development, the UK has been supportive of the overall objective of the proposal as we believe it could reduce administrative burden for UK businesses and citizens engaging in cross-border activity in the Single Market. The UK is committed to supporting businesses and citizens through high quality online information and services.

A number of key points of agreement in line with the UK's position emerged throughout the Working Group and COREPER discussions leading up to Council. The final text put forward by the Presidency sufficiently addressed the UK's concerns about the original proposal, as described in more detail below. The UK was therefore able to support the General Approach.

Flexibility and value for money

The UK was satisfied that the Council text introduced additional flexibility for Member States in rolling out online capability, allowing them to respond to users' needs and to determine an appropriate level of security and assurance, and delivering better value for money.

Some Annex II procedures were scaled down in their scope or clarified. For example, one procedure was amended to read "Registration of an employer (a natural person) with *compulsory* pension and insurance schemes", rather than "*public or semi-public*" schemes. An amendment clarifies that where an online procedure does not already exist in a Member State, the Member State would not have to create one in order to digitalise it: in particular, this would avoid the potential costs to the UK of creating a new centralised online 'change of address' procedure. Additionally, one procedure was deleted from the proposal, 'requesting/renewing ID card or passport'. Our view was that this could both reduce potential costs and alleviate concerns regarding identity assurance levels.

According to the Council text, Member States can provide procedures partially offline if there are overriding reasons of public interest or where being present in person is necessary in order to complete the procedure. The original text stated that physical presence must be limited to "what is strictly necessary and objectively justified". This provides a useful opt-out from providing a procedure "fully online" in certain circumstances such as reasons of national security or where certain eligibility checks are best carried out in person. In addition, when making online procedures available to other Member State users under the non-discrimination provisions, authorities may pursue "an alternative technical solution" leading to the same outcome. This provides more flexibility in how digital services are designed to accommodate this obligation`.

Amendments were agreed which allow Member States to take measures to "safeguard cybersecurity and prevent identity fraud or other forms of fraud". In addition, Member States will be able to take additional steps to verify information in cases of doubt when evidence is submitted through the "once-only" technical system.

Of key importance to the majority of Member States, including the UK, was having sufficient time to implement the new digital capability required by the Regulation. The Council text staggered the implementation period for different provisions, with the most basic obligations on the Commission coming into force shortly after the Regulation is published, and the substantive obligations on the Commission and Member States coming into force in a phased implementation of two, three and five years. The five year implementation period will apply to the most complex areas of the Regulation,

such as making Annex II's list of procedures fully online, providing access to online procedures for other Member State users in a non-discriminatory way and the "once only" technical system.

Translation requirements

The original proposal included the requirement to provide a wide range of information and instructions in at least one other official EU language.

The Council text requires Member States to make certain information, explanations and instructions "accessible in an official Union language broadly understood by the largest possible number of cross-border users." Where this is not the case, Member States must request translations be carried out by the Commission. The translation will be limited to "a maximum annual volume per Member State" to be covered by the general budget of the European Union. Translation would only have to enable users to understand the basic rules and requirements, as opposed to wholesale translation of all the information and instructions in scope.

Our initial assessment is that if English qualifies as a "language broadly understood by the largest possible number of cross-border users", the UK may not be obliged to translate information into an additional language.

Quality requirements

The UK is content that the quality requirements proposed will help to address the varying standards of online services across the EU.

We also pressed for amendments that better reflect user needs. As a result, amendments were introduced to the requirements on the quality of information. These give an assurance that presenting information in a "clear and user friendly way" is paramount. Requirements about how information is best presented could be applied flexibly in light of this.

With respect to requirements on the quality of procedures, we had been concerned that the obligation to provide a long list of information before the user begins a procedure could mislead or confuse. In the Council text, there is now more discretion over what information on procedures is "applicable" to include. This means that Member States can provide information at an appropriate stage of the procedure.

The "Once Only" principle

As described above, the longer implementation period will apply to the "technical system", which will implement the "once only" principle. This is aimed at avoiding the need for users to submit repeatedly the same information if evidence to different EU authorities. The Council's agreed text also states that the technical detail of the "once only" system shall be set out in the implementing acts, which will also determine the date from which Member States must apply the principle. This allows for a more sensible, phased approach to rolling out a highly complex system. Member States will have a role in scrutinising the technical detail and ensuring that the date of adoption is feasible.

Other issues

In light of recommendations by the Council Legal Service, the Presidency's compromise removed Article 21(1) and Article 48 TFEU (*The Treaty of the functioning of the European Union)* as legal bases, with Article 114(1) remaining the sole legal base. The UK supported this change, as a welcome clarification that the predominant aim of the Regulation is to facilitate the internal market.

Next steps

The IMCO committee of the European Parliament is expected to review a draft report early next year. Once the European Parliament has adopted its report, trilogue discussions will ensue. We will continue to analyse future iterations of the text and seek to influence it according to the priorities we have set out.

15 December 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2010/13/EU ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES CONCERNING THE PROVISION OF AUDIOVISUAL MEDIA SERVICES IN VIEW OF CHANGING MARKET REALITIES (9479/16)

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital, Department for Digital, Media and Sport

Following your letter of 8 September, I am writing to provide an update on the ongoing trilogue talks. The trilogue talks commenced in July 2017 under the Estonian presidency, with monthly meetings scheduled until the end of the year.

The trilogue process is still in its early stages, therefore no significant outcomes can be reported at this point. We are using the trilogue talks to influence the final wording of the text, particularly on the points that have impact on the UK and its audiovisual industry.

The General Approach reinstated the original wording of the jurisdiction criteria, which proposes that the jurisdiction for services where editorial decisions are made in more than one Member State will be determined by where a significant (rather than a majority) proportion of the workforce is located. It appears that the European Parliament text agrees with this approach, so we are confident the final wording will have 'significant' rather than 'majority' workforce, that was in the Commission's proposal.

The General Approach increased the quotas for European Works from 20% to 30% for video-on-demand services. Although we opposed quotas from the outset, we acknowledged that most Member States supported them, and our opposition was to ensure that the quotas did not increase to unsupportable levels. Our assessment of the UK based video-on-demand media providers shows that they exceed this quota, therefore it would not be problematic for them to comply with the proposed changes.

The General Approach introduces a set of mandatory and optional exceptions that are to be applied in the case of quotas as well as in the cross-border levies. A number of Member States with smaller media markets (e.g. Slovakia) expressed their concern about the mandatory exception for micro enterprises (i.e. fewer than 10 employees and balance sheet lower than €2 million) as this does not take into account the smaller size of the markets of certain Member States, where the majority of media companies are micro-enterprises. The proposed language had the possible unintended consequence of existing national film fund systems being unable to operate in these small markets. The UK acknowledges that audiovisual market size varies across the EU. Simultaneously, we wish to protect small audiovisual enterprises with cross-border services, which broadcast from the UK. During the trilogue process we will seek to influence this wording.

Furthermore, we are using the trilogue talks to challenge the language which is used in relation to video-sharing platforms due to the lack of legal clarity as to its precise scope. As drafted, it would encompass any video service where the sharing of video content is an "essential functionality" of that service. We are working to make certain that there is more clarity at the trilogue stage, and ensure that this aligns with our emerging thinking on the Digital Charter.

Since the trilogue talks are still in their early stages and are ongoing, no deadline for transposition has been agreed. At the moment it is unclear whether the transposition would take place prior to the UK exiting the EU, as this is largely dependent on the progress of talks.

I will provide an update before the the next EYCS council in November in regard to the further developments in the trilogue talks and potential deadlines for transposition. I remain at your disposal if you have any further queries.

19 October 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ADDRESSING GEO-BLOCKING AND OTHER FORMS OF DISCRIMINATION BASED ON CUSTOMERS' NATIONALITY, PLACE OF RESIDENCE OR PLACE OF ESTABLISHMENT WITHIN THE INTERNAL MARKET AND AMENDING REGULATION (EC) NO.2006/2004 AND DIRECTIVE 2009/22/EC (9611/16)

Letter from Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Further to Lord Prior's letter of 27 June, I am writing to update you on progress made on the Geoblocking Regulation.

As set out in previous correspondence, the proposed Geoblocking Regulation seeks to ensure that customers purchasing certain products and services across borders within the Single Market (online or in person) are not discriminated against on the basis of their nationality or place of residence. Discriminatory practices covered include differential access to prices, sales or payment conditions.

As you know, there has been significant progress in 2017 on getting this proposal agreed in trilogues, thanks, in large part, to the efforts of the Maltese and Estonian Presidencies. As highlighted in Lord Prior's letter of 27 June, the major substantial issue left to be resolved between the European Parliament and Council concerns the scope of the Regulation, specifically whether it should include non-audiovisual, digital services which provide access to copyright-protected works, such as eBooks and online music services. The European Parliament wants these services included, whereas the Council's position was to exclude them. If these services are included in scope, the proposal would prevent a retailer holding the copyright for a particular service in several territories from distinguishing between consumers in those territories.

The Estonian Presidency is working to agree a compromise before the end of the calendar year. While the non-audiovisual scope issue is not a red line for the UK, we welcome the Estonian's efforts to secure a compromise. As set out in previous correspondence from my predecessor, our main concern is to keep audiovisual copyright services out of scope.

We will continue to play an active role in these negotiations to ensure that UK objectives are met. Based on the current momentum, it is possible that an agreement may be finalised in November.

I will, of course, keep you updated on any progress on this file.

7 November 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1071/2009 AND REGULATION (EC) NO 1072/2009 WITH A VIEW TO ADAPTING THEM TO DEVELOPMENTS IN THE SECTOR (9668/17)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2006/1/EC ON THE USE OF VEHICLES HIRED WITHOUT DRIVERS FOR THE CARRIAGE OF GOODS BY ROAD (9669/17)

Letter from Jesse Norman MP, Under Secretary of State, Department for Transport

Thank you for your letter of 8 September about the Explanatory Memorandum (EM) on the above European Commission proposals. Your suggestions and comments are very helpful. I am writing in response to the Committee's queries as set out in your letter, and also to update the Committee on developments.

The Presidency is continuing to take these proposals forward in working group, with a view to giving a progress report at the 5 December Transport Council. In these discussions, the UK approach is to support those proposals which are well evidenced and will assist in promoting fair and open competition, but to resist elements which could place substantial additional burdens and administrative

costs on Light Commercial Vehicle (LCV) operators, many of whom are small businesses which in the UK are already regulated by other rules on safety and roadworthiness.

Cabotage

The Committee asked our views on whether the effects of cabotage liberalisation could be counterbalanced with more opportunities for UK operators. The current rules allow UK hauliers in the course of international business to undertake limited cabotage abroad, sufficient to avoid empty running (and the associated competitive disadvantage for international haulage) between out and return international legs.

I should explain that the overall rates of cabotage performed by UK-based operators are low and this has remained the case for several years. The amount of cabotage abroad undertaken by UK operators in 2015 was less than one fifth that operated by non-UK operators in the UK (262m tonne-km by UK operators abroad compared to 1.4bn tonne-km of cabotage within the UK). The overwhelming majority of UK cabotage abroad is done in Ireland and the nearest mainland European countries and there is little indication that this type of cabotage is being constrained by the current rules.

The Committee asked whether the current cabotage proposals would reduce empty running. As cabotage operations constitute such a small percentage of the domestic haulage movements in the UK (barely 1%), we would anticipate this to have a very limited impact. The current cabotage regime (3 journeys in 7 days) allows sufficient scope for repositioning in the UK without empty running, as long as there are no geographical market imbalances in the commodity flows (which more cabotage rights themselves would not resolve).

The Committee also asked about the impact of cabotage rules on road safety. It is difficult to provide evidence on this score and the situation is complex. UK and EU HGVs are in theory subject to the same safety and vehicle maintenance standards. Most safety incidents in the UK do tend to involve UK registered vehicles. That said, when checked at the roadside, foreign vehicles tend to present serious defects more often than UK vehicles and appropriate penalties are levied against this. Targeted action can be taken where a specific problem is identified, for example Fresnel lenses[4] were provided for some foreign vehicles and there are specific operational interventions planned to tackle tachograph manipulation.

Evidence on the number of foreign HGVs involved in accidents in the UK is not available. However, DfT-published data provides a split of HGV accidents by right and left hand drive. In 2016, there were 5,819 HGVs involved in accidents in Great Britain. Of these, 323 (5.6%) were Left Hand Drive. No information is available on the nationality of vehicles from DfT's reported road casualty statistics; some foreign vehicles, e.g. from Republic of Ireland, will be right hand drive and there are a number of left hand drive UK registered HGVs especially in specialist sectors such as refuse collection so this is not an exact proxy for foreign vehicle accidents.

Regulation of Vans

The Committee queried if the Government had undertaken any analysis on the number of Light Commercial Vehicles (LCVs) being used for the transport of goods in the UK and whether this is increasing. Economists are currently analysing the Impact assessments provided by the Commission and we can provide further information once this is complete. I remain opposed to unjuistified and disproportionate burdens being placed on LCV operators, many of whom are small businesses.

Preliminary findings show that there are 1.8M LCVs registered to companies in the UK in 2016 with a 5% increase from the numbers in 2014. In the provisional road traffic estimates for Great Britain for the year ending June 2016, van traffic increased by 3.6% to a record high of 49.8 billion vehicle miles. For the last four years, van traffic has increased on average by 4.5% per year, and has been the fastest growing traffic type (in percentage terms) over this period.[5]

We can confirm cabotage rules only apply to vehicles exceeding 3.5t and would not apply to LCVs under the current proposals. It is possible for LCVs to be used on business as part of a non-haulage foreign business operation in the UK (for example transporting materials within the UK for people

[4] Fresnel lens: flat lens with a series of concentric rings, which can be used to give HGV drivers a better field of view and reduce blind spots

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644751/prov-road-traffic-estimates-Jul-2016-to-Jun-2017.pdf

working here temporarily). If a foreign LCV owner wishes to undertake commercial haulage in the UK they would need to establish their business here and re-register the vehicle in accordance with DVLA requirements before being able to undertake work here.

The Committee asked our view on whether the Commission's weight categorisations of LCVs remains appropriate. 3.5t (the upper limit of LCVs) is generally a well-recognised and long-established threshold, used widely by manufacturers. Some large vans can be overloaded past the 3.5t threshold, but this is an issue shared with many larger goods vehicles. We understand the main motivation for regulation relates to the use of larger/heavier LCVs,

At the 3.5t threshold we do see the usefulness of flexibility to vary the threshold for alternative technology (e.g. electric), which can be heavier, whilst not allowing more payload. The existing rules allow sufficient flexibility to do this in driver and operator licensing.

Autonomous and Hired Vehicles

In general terms the proposals do not restrict technological advancements in the haulage sector, however there is no direct reference to autonomous vehicles in these proposals. It is too early to modify driver's hour's rules and tachograph settings, but this could be reviewed in due course as technological advancements are made.

You asked our views on the proposals to allow undertakings to use vehicles hired anywhere in the EU across the EU. There are currently no restrictions in the UK on the use of hired goods vehicles for own account transport, the proposals are unlikely to have an impact on the UK and we have identified no specific security implications from this. Potentially this liberalisation across Member States may mean vehicles could be hired in Europe and driven to the UK. However as the UK does not have any restrictions a vehicle could be hired similarly in the UK. As UK freight vehicles are right hand drive there may be limited interest in hiring vehicles from mainland Europe for use in the UK and vice-versa.

Engagement with Stakeholders

Engagement on these proposals have taken place with various stakeholders including the Traffic Commissioners and the Driver & Vehicle Standards Agency (DVSA) who are charged with ensuring compliance with the regulations which includes road safety. Your suggestion of further engagement with road safety stakeholders is particularly helpful. We have just sought input from industry stakeholders (including associations and unions) which have interests in safety. We are planning further consultation with more stakeholders including road safety organisations and general road user groups. We are happy to provide a summary of views received.

The European Parliament's TRAN Committee is at an early stage in its consideration of these proposals, and is not currently expected to complete its report until May 2018.

I hope this update is helpful, and I will, of course, continue to keep the Committee informed during further negotiations.

23 October 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 561/2006 AS REGARDS ON MINIMUM REQUIREMENTS ON MAXIMUM DAILY AND WEEKLY DRIVING TIMES, MINIMUM BREAKS AND DAILY AND WEEKLY REST PERIODS AND REGULATION (EU) 165/2014 AS REGARDS POSITIONING BY MEANS OF TACHOGRAPHS (9670/17)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2006/22/EC AS REGARDS ENFORCEMENT REQUIREMENTS AND LAYING DOWN SPECIFIC RULES WITH RESPECT TO DIRECTIVE 96/71/EC AND DIRECTIVE 2014/67/EU FOR POSTING DRIVERS IN THE ROAD TRANSPORT SECTOR (9671/17)

Letter from Jesse Norman MP, Under Secretary of State, Department for Transport

Thank you for your letter of 8 September about the Explanatory Memorandum (EM) on the above European Commission proposals. I am writing in response to the Committee's queries as set out in your letter, and also to update the Committee on developments.

The Committee asked for our view on the balance in the proposals between adequate working conditions for drivers and operators' freedom to provide cross-border services. In the Government's view, the proposals broadly strike the right balance between ensuring adequate working conditions for drivers and operators' freedom to provide cross-border services. We appreciate the Commission's aims of improving the enforcement of the social legislation (i.e. drivers' hours and working time rules) and clarifying some of the existing rules, together with improving workers' social and employment conditions.

We are undertaking an ongoing assessment of the potential impact of these proposals on UK drivers and operators as the negotiations develop in Council working groups. My officials have so far held discussions with the main trade associations (the Road Haulage Association, the Freight Transport Association and the Confederation of Passenger Transport) and the main Unions (UNITE the Union and the United Road Transport Union) for their views on the package of proposals and how they could affect UK industry and drivers. Alongside the parallel 'market access' proposals, my officials also plan to engage with representatives of the Police, highways and local government bodies.

The Commission proposes a number of changes to the rules governing minimum weekly rest requirements. The proposed introduction of an obligation for operators to enable drivers to return home periodically for a weekly rest and proposed clarification around the prohibition on drivers taking their regular 45 hour weekly rest in their vehicle are, in principle, to be welcomed, although we will work to ensure that the details of these proposals is practical and enforceable.

The Commission also proposes to introduce additional flexibility to enable a driver to take a reduced weekly rest (of at least 24 hours) on two consecutive weeks, whereas at present the rules only permit this derogation for one week. Our view is that the current rules are well-established and broadly strike the right balance between driver welfare and operator flexibility, and therefore any changes to them need to have clearly demonstrated benefits. While the effects on driver fatigue of such a change are extremely difficult to predict ex ante, it is logical that by lengthening the period between a driver's full weekly rests, the proposals could introduce new such risks. We will continue to engage other Member States and stakeholders in relation to this point, but are clear that the outcome of the package should not be to worsen road safety-critical provisions.

We have some reservations about the Commission's proposals on the enforcement of the sector-specific EU working time rules, particularly the proposed requirement to require enforcement of these at the roadside. While we fully agree that it is important that these rules are respected, for both worker protection and road safety reasons, there are practical difficulties with the proposals, in particular since many of the relevant records are only held at the operator's premises. We have worked closely with the Driver and Vehicle Standards Agency (which is responsible for enforcing these rules) to better understand the potential impact on of these proposals on their resources. We consider that this impact could be significant, especially given the technical difficulty with roadside enforcement of working time rules, which would entail checking of a driver's manual records.

Posting of workers rules allow businesses to temporarily send a worker employed in a company in one EU Member State to fulfil a service contract in another EU Member State. It requires employers to meet minimum terms and conditions of employment. As your letter notes, the Department for Business, Energy and Industrial Strategy is engaged on an amendment to the Posting of Workers Directive, and my Department is in close liaison with them on the proposed road transport-specific *lex specialis*.

The proposed sector-specific rules would, at a high-level:

1. limit the administrative burdens that Member States can impose on hauliers operating in their country; and

2. require Member States to dis-apply national minimum wage rules to drivers that work in that country for no more than three days per month.

We consider that the proposals on administrative requirements are a pragmatic response to some un-coordinated national measures in some Member States, are to be welcomed, and would help British hauliers operating abroad.

The disapplication of minimum wage rules is the Commission's attempt to avoid disproportionate administrative requirements being imposed on drivers (and their employers) that spend a very limited amount of time working in a given Member State. For this reason, we are open to the Commission's suggestion. However, a number of points of clarification have been requested from the Commission by Member States in order to more fully understand how these provisions would work in principle and we are carefully monitoring these developments.

Progress on these proposals in working groups has been mixed. While the Presidency has been able to progress certain issues and begin to formulate compromise positions for discussion, some of the bigger issues, and in particular, the key questions around the posting of workers proposals, have moved more slowly. As your letter indicates, there is debate among some Member States over the need for a *lex specialis*, and, as referred to above, there has been a number of requests for further, formal clarification. The European Parliament's TRAN Committee is at an early stage in its consideration of these proposals, and is not currently expected to complete its report until May 2018.

I hope this update is helpful, and I will, of course, continue to keep the Committee informed during further negotiations.

23 October 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 1999/62/EC ON THE CHARGING OF HEAVY GOODS VEHICLES FOR THE USE OF CERTAIN INFRASTRUCTURES (9672/17)

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 1999/62/EC ON THE CHARGING OF HEAVY GOODS VEHICLES FOR THE USE OF CERTAIN INFRASTRUCTURES, AS REGARDS CERTAIN PROVISIONS ON VEHICLE TAXATION (10175/17)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE INTEROPERABILITY OF ELECTRONIC ROAD TOLL SYSTEMS AND FACILITATING CROSS-BORDER EXCHANGE OF INFORMATION ON THE FAILURE TO PAY ROAD FEES IN THE UNION (RECAST) (TEXT WITH EEA RELEVANCE) (9673/17)

Letter from Lord Whitty on behalf of the Chairman to Jesse Norman MP, Parliamentary Under-Secretary of State for Roads, Local Transport and Devolution, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 5 July 2017 on the above proposals. The EU Internal Market Sub-Committee considered your EM at its meeting on 26 October 2017.

We would welcome further clarification on the proposed changes to the Eurovignette Directive. In particular, we would like to know:

- To what extent would the proposed amendments mandate the level at which Member States may set vehicle charges? Are calculation methods specified?
- Would the same charging framework apply to heavy and light-duty vehicles, including the ability to vary charges according to CO_2 emissions?
- Would the proposal only allow for varying charges according to CO_2 emissions or could charges also be varied according to levels of other pollutant emissions?
- Would UK Vehicle Excise Duty be considered a time-based levy under the proposals and if so, due to be phased out?
- Is the Commission planning to insert rules on how charges should be collected and receipts provided into the draft text, or through another legislative instrument? Does the Government think that standardisation in this manner is necessary and proportionate?

1. Regarding the proposed EETS Directive, would the requirement for vehicle registration authorities to provide information to other Member State authorities include any additional enforcement responsibilities for the 'information provider'?

We have decided to retain these documents under scrutiny. Your EM sets out a number of questions still under consideration, including on the proposals' compliance with the principle of subsidiarity. We look forward to an update on your subsidiarity assessment, responses to our questions, and a general update on these files within 30 working days.

27 October 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CROSS-BORDER PARCEL DELIVERY SERVICES (9706/16)

Letter from Margot James MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 24 July confirming that the Committee had noted the General Approach agreement and cleared the Cross-Border Parcel Delivery Services file from scrutiny. This letter provides an update on progress since the summer, including the European Parliament's proposed amendments and our intended negotiating approach as the file moves into the trilogue process.

In broad terms, the Parliament's proposed amendments support UK objectives, particularly in terms of reducing burdens on national regulatory authorities and postal operators in Article 3 (Information Requirements) and Article 5 (affordability assessment). The Parliament introduced a new Article 6(a) that in part replicates existing EU obligations and in part imposes further obligations on online cross-border retailers. It requires retailers that deliver products to consumers based in another Member State, in particular to individuals and SMEs, to provide upfront delivery information and details of complaint handling processes of the retailer and the parcel delivery operator.

Member States discussed the European Parliament's proposals at a Working Party on 8 November. The Presidency called for Member States' constructive engagement to ensure that the negotiations reach a conclusion by the end of the year. In discussion, we and other Member States questioned how the proposed Article 6(a) added value. While we understand the rationale for increasing consumer protection (albeit only for cross-border retailers under this scenario), we do not believe that this Regulation is the place to address it. This Regulation is intended to increase price transparency and improve affordability of cross-border parcel delivery operator services, and not to increase or replicate existing consumer protection. We still have concerns that Article 3 extends the information requirement provisions to delivery operators' sub-contractors. We would prefer to see a simplified approach adopted here, and similarly in the affordability assessment in Article 5, to facilitate the application in practice by delivery service providers and national regulatory authorities. We believe that both the Parliament and Member States will be encouraged to look for concessions as we move into the trilogue process and that there is scope for compromises to be reached.

28 November 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN THE LEGAL FRAMEWORK OF THE EUROPEAN SOLIDARITY CORPS AND AMENDING REGULATIONS (EU) NO 1288/2013, (EU) NO 1293/2013, (EU) NO 1303/2013, (EU) NO 1305/2013, (EU) NO 1306/2013 AND DECISION NO 1313/2013/EU (9845/17)

Letter from Lord Whitty on behalf of the Chairman to Tracey Crouch MP, Minister for Sport and Civil Society, Department for Digital, Culture, Media and Sport

Thank you for your letter dated 18 August 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 19 October 2017.

We note your view that the Regulation is unlikely to apply from 1 January 2018, as the proposal will not have been agreed at Council by that date. Given that discussions on this file were put on hold over the summer, we would welcome a further update on their progress, and any significant amendments to the draft text, now that negotiations have recommenced. We also look forward to receiving information on the number of UK citizens who have registered for the Solidarity Corps, once the Commission has provided you with these figures.

We were disappointed that the Government felt unable to share the views of the devolved administrations on the European Solidarity Corps. However, we welcome your commitment to securing a Brexit deal that works for all the UK – Scotland, Wales, Northern Ireland and England – with the full engagement of the devolved administrations in this process.

We look forward to your response to this letter within 20 working days. In the meantime, the proposal remains under the scrutiny reserve.

19 October 2017

Letter from Tracey Crouch MP, Minister for Sport and Civil Society

General Update and request for scrutiny clearance/waiver

On 30 June 2017 I submitted the above explanatory memorandum (EM) and committed to keeping both Committees updated as negotiations on the European Solidarity Corps ("the Corps") moved forward.

We are progressing with preparations for the EU Education, Youth, Culture and Sport (EYCS) Council meeting on 20th November, at which the Estonian Presidency will encourage member states to vote in favour of a general approach. As well as writing to update you on the Regulation's progress, I am writing to request clearance or scrutiny waiver to enable us to vote in support of a general approach at the Council meeting.

Negotiations so far

The text has been debated at various Youth Working Party meetings where we have promoted the UK's position on the Regulation.

As a result, the current, final version of the text that is due to be considered by the Committee of Permanent Representatives in the European Union (COREPER) on 8th November ahead of the Council meeting. The Government is satisfied with the text as it stands.

Amendments to the text

We conducted a write-round within government on the Regulation over the summer. The main substantial position on the corps was voiced in the Department for Education's return, which emphasised the need to avoid traineeships forming an integral part of the corps, and for any reference to 'paid' traineeships to be removed to avoid unfavourable and incorrect comparison with national, unpaid traineeship placements.

'Paid' traineeships are still referred to in the text, but following negotiations, wording in the current text does not obligate member states to offer traineeships. The Department for Education is content with this change and compromise.

The text has also been altered throughout to make it clearer that the Solidarity Corps should be seen as a supplement to existing national programmes and policies, and that any obligation to cohere with national programmes should be placed on the European Solidarity Corps, as opposed to visa versa.

There are a few changes that we would like to see to the text to make delivery of the Corps more flexible in nature. For example, we would like greater flexibility to offer 'cross border' and/or 'in country' placements for reasons of subsidiarity. Currently the wording of the regulation does not make this flexibility clear at all points in the text. HMT has also advised that the budget for the Corps should be taken from redeployments rather than from the margins, and the current proposed split between these two funding sources is 75% and 25% respectively. However, these concerns are not fundamental, and we are broadly content with the current draft of the text.

We are also exploring a potential issue that arose at the final Youth Working Party this week on visas. The Netherlands want to amend the text to make an explicit reference to Directive 801 2016 that regulates visas for third party nationals for volunteering activities. The UK did not opt into this Directive, and would therefore not want to be bound to the content via the Regulation. The current version of the text does not refer to the directive, but if member states succeed in inserting this new proposal into a future draft, we will liaise closely with Home Office before COREPER to ensure the UK position is established and can be negotiated so that any reference to elements of the Directive is non binding. At present, this does not affect our position on the text, but should it emerge as an issue, I will come back to you with an update.

I enclose a copy of the latest text which is marked limité and is being shared with the Committee in confidence under the established arrangements for sharing these documents.

Council 20th November

If the UK's negotiating position is met, we shall vote in favour of this file.

I hope the Committee will find this update helpful and provide clearance or a scrutiny waiver ahead of the Council. I am of course happy to report further after the Council and will keep the Committee updates during the trilogue negotiations.

6 November 2017

Letter from Tracey Crouch MP, Minister for Sport and Civil Society

I am writing in response to the Committee's letter of the 19th October on the Proposal for a Regulation laying down the legal framework for the European Solidarity Corps, a file the Committee considered on the same date.

I am pleased to be able to answer the final question raised by the Committee over the summer; the number of UK citizens who have registered for the Solidarity Corps. I originally provided a holding response as my officials were awaiting information from the European Commission. However, the Commission has now provided the Corp's National Agency Ecorys with the figure, and I can confirm that to date 1,419 young people from the UK have signed up to the portal.

My letter of the 6th November to the House of Commons EU Committee that was copied to this Committee gave a general update on the negotiations and preparations for the EU Education, Youth, Culture and Sport (EYCS) Council meeting on 20th November, at which the Presidency will encourage member states to vote in favour of a general approach.

Since writing, the Committee of Permanent Representatives to the European Union (COREPER) has met and considered the Regulation. My letter of the 6th November made reference to a potential issue that arose at the final Youth Working Party on this file on visas. The Netherlands wanted to amend the text to make an explicit reference to Directive 801 2016 that regulates visas for third party nationals for volunteering activities. The UK did not opt into this Directive, and would therefore not want to be bound to the content via the Regulation. The final version of the Regulation includes a reference to the directive, but we worked with the Home Office and UKRep to negotiate the addition of text to make it clear that the provision will be non binding to member states who have not opted into the Directive (the UK, Ireland and Denmark). We consider this to be the last outstanding issue, and now that it has been mitigated, that we could vote 'yes' to a general approach on 20th November.

I hope this letter serves as a comprehensive update and that you can look to grant scrutiny clearance/waiver ahead of the Council meeting on 20th November.

16 November 2017

Letter from the Chairman to Tracey Crouch MP, Minister for Sport and Civil Society

Thank you for your letter dated 6 November 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 16 November 2017.

We welcome your update on the provisions of the latest draft proposal and your confirmation that the Government is satisfied with the text as it stands.

We look forward to an update on any further changes to the text, particularly in relation to Directive 2016/801. We also look forward to receiving information (requested in previous correspondence) on the number of UK citizens who have registered for the Solidarity Corps, once the Commission has provided you with these figures.

We have decided to grant a scrutiny waiver for the Council meeting on 20 November 2017. If a General Approach is not reached at this meeting, the scrutiny reserve will once again apply.

We look forward to a response to this letter including an update on the outcome of the Council meeting within 30 working days.

16 November 2017

Letter from Lord Whitty on behalf of Lord Boswell, to Jesse Norman MP, Parliamentary Under Secretary of State for Roads, Local Transport and Devolution, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 5 July 2017 on the above proposals. The EU Internal Market Sub-Committee considered your EM at its meeting on 26 October 2017.

We welcome the proposed Regulation's objective of improving the quality of available data regarding fuel consumption and CO_2 emissions for heavy-duty vehicles. We also recognise the challenges of emissions testing these vehicles but share your view that VECTO modelling should be supplemented by on-road testing.

We look forward to a general update on the progress of this file as well as a specific update on the proposed powers for the Commission to amend the annexes to the Regulation.

Regarding the Recommendation on vehicle labelling information, please would you clarify the rationale for the proposed switch date of 1 January 2019 to WLTP labels given the WLTP testing implementation dates of 1 September 2017 for new vehicle types and 1 September 2019 for all new vehicles?

Would this Recommendation impact how information on other pollutants such as nitrogen oxide (NOx) is provided to consumers?

We have decide to retain these files under scrutiny. We look forward to your response within 30 working days.

27 October 2017

Letter from Jesse Norman MP, Parliamentary Under Secretary of State for Roads, Local Transport and Devolution

Thank you for your letter of 27 October. I am writing as requested to update you on progress. An update on the rationale for the switch date on the vehicle labelling information under the Commission Recommendation C(2017) 3525 will follow.

As you will recall, the Government broadly welcomed the proposal. It was well received by all Member States, who broadly agreed that a lack of market transparency as to the fuel consumption and CO_2 emissions from large commercial vehicles is contributing to a lack of improvements from vehicle manufacturers. Progress in working group negotiations has therefore been swift and not controversial.

Substantive discussion in Working Group meetings, most recently on 4 December, has focussed on the publication of a small number of specific pieces of information that could potentially damage the commercial interests of manufacturers, such as engine and aerodynamic performance data.

A compromise has now been reached whereby all data will be available to accredited third parties, such as type approval authorities, to allow them to recreate tests and verify the results of modelling through real world testing. The most commercially sensitive data will be made available publically, grouped together in performance bands. This will mean that consumers, transport operators and third parties will still benefit from comparative information and increased competition amongst manufacturers, but will not threaten the commercial interests of vehicle manufacturers. The compromise strikes a satisfactory balance and should promote transparency of performance data.

We initially had reservations on the issue of powers proposed for the Commission to amend annexes to the Regulation to increase data reporting requirements, which we felt could leave Member States with an increased administrative burden. We have reviewed this issue with the Driver and Vehicle Licensing Agency (DVSA) and on balance, after considering the way in which data is collected, we now believe the risks of an increased administrative burden are very low. In working group discussions the Commission received strong support for its proposals from other Member States who were convinced that the powers are needed to be able to verify the results of future modelled tests and deliver robust regulation.

Given the rapid progress in working group discussions the Estonian Presidency now intend to seek a mandate from Coreper on 15 December, to open trilogue negotiations with the European Parliament in early 2018. The proposal is currently being considered by the Parliament's Environment Committee, which is expected to complete its report in January. Although it is not possible to pre-empt the Parliament's internal discussions on this file, it looks likely they will focus on issues relating to transparency and the robustness of reporting mechanisms.

7 December 2017

ENERGY COUNCIL 18 DECEMBER 2017

Letter from the Rt Hon Lord Henley, Parliamentary Under-Secretary of State, Department for Energy, Business and Industrial Strategy

The Energy Council is scheduled to meet on 18 December where I shall represent the UK.

Please find attached a Pre-Council Written Statement which is being laid in both Houses.

14 December 2017

UK TRADE REMEDIES AUTHORITY

Letter from Lord Whitty, on behalf of the Chairman, to the Rt Hon Dr Liam Fox MP, Secretary of State, Department for International Trade and President of the Board of Trade, Department for International Trade

You may be aware that the EU Internal Market Sub-Committee is currently conducting an inquiry into the implications of Brexit for competition and State aid law and policy in the UK.

In the context of our inquiry, the Committee read with interest your Department's proposals for a "new, independent, trade remedies investigating authority" as outlined in the paper: *Preparing for our future UK trade policy*. We had a wide ranging oral evidence session this week with the BEIS Minister Margot James MP, and she referred us to your department in relation to this particular aspect.

We would be grateful if you could provide us with further information about the expected remit and resource requirements of the proposed authority. In particular, we would like to know why it is necessary to create an independent body to investigate trade remedies cases, as opposed to the Department for International Trade fulfilling this function, and what the relationship between your department and the authority will be.

The paper notes that the authority will investigate trade remedies cases and make recommendations on the basis of clear economic criteria. This appears to imply that ultimate decision-making power will lie elsewhere, presumably with Government Ministers. However, the paper goes on to say that the trade remedies framework will provide a route for interested parties to appeal decisions made by the investigating authority. We would welcome clarification in this regard. We would also be interested to learn what preparations your department has undertaken for the creation of this new authority.

The Committee has now finished taking oral evidence for the inquiry but we would be grateful to receive your response to this letter as soon as possible, so we can factor it in to our final report.

3 November 2017

Letter from the Rt Hon Dr Liam Fox MP, Secretary of State, Department for International Trade and President of the Board of Trade

Thank you for your letter of 3 November 2017 and for the opportunity to inform your Committee about the UK Trade Remedies Authority (TRA). You may be aware that the Trade Bill was introduced in the House of Commons on Tuesday 7 November. This Bill will bring forward measures to establish this new arms-length body. As a result, documentation which accompanies the introduction of new bills, including explanatory memoranda and impact assessments, have been made available to Parliament

which would provide you and your Committee members with additional details should you want them about the Government's intentions with regard to this new body.

In response to your specific questions, the remit of the TRA is based on World Trade Organisation (WTO) rules.[6] These rules enable members to create a safety net to protect domestic industry against unfair and injurious trade practices – specifically dumped and subsidised imports. Provision is also made for unforeseen and injurious surges in imports. They allow members to impose measures (usually a duty) on imports of specific products following an investigation. Currently the European Commission undertakes trade remedies investigations, and imposes any remedies, on behalf of Member States, including the UK. Once we leave the EU, we will no longer be part of this process.

It is crucial that the UK can continue to provide a safety net to domestic industries, particularly against unfair and injurious trading practices. That is why the Government has now introduced the Trade Bill to Parliament. Among other things, this will establish a new independent body, the TRA, which will be responsible for conducting trade remedies investigations.

The Government's intention is that the TRA will be set up as an executive non-departmental public body of the Department for International Trade. It will have its own Chair and Accounting Officer and would be governed by the Department according to the Cabinet Office's public body governance principles. It is appropriate that the new body is set up as an arm's length body in order to demonstrate and preserve its impartiality; decisions on trade remedies cases can have significant impacts on markets. Our analysis of other countries' trade remedies authorities revealed many have elements of the process delivered by authorities independent of the executive. The TRA's arm's-length status will help ensure that it has the appropriate degree of separation from the Department for International Trade in order to create an impartial and objective investigation process that businesses will have full confidence in.

The TRA will be staffed with the required resources to ensure it has the capability and capacity to deliver effective investigations and evidence-based conclusions. The estimated cost of funding the TRA is between £15-20 million annually, paid out of the Consolidated Fund. The final amount and timing of any financial implications depends on the outcome of negotiations with the EU and on policy decisions yet to be taken.

You have asked about the decision making process for investigations, and what route there is for interested parties to appeal decisions. The Government has now tabled resolutions for the upcoming Taxation (Cross-border Trade) Bill. This legislation will include further details on the processes through which trade remedies will be investigated and applied, including the role of Ministers in this process. It will also include details on the domestic appeals regime for trade remedies, which is a mandatory requirement set out by the WTO.

By the time the UK leaves the EU, the TRA will be required to investigate and propose trade remedies measures, operating within a framework that is consistent with our WTO obligations. The Government's intention is to ensure that UK companies have continuous access to a trade remedies service as the UK leaves the EU. Therefore, officials in the Department for International Trade are taking the necessary steps to ensure the TRA is operational in time to meet this commitment.

15 November 2017

[6] Agreement on the Implementation of Article VI [i.e. 6] of the General Agreement on Tariffs and Trade 1994; The Agreement on Subsidies and Countervailing Measures; and the Agreement on Safeguards